

STATE OF TEXAS VS. RUBEN GUTIERREZ

73462

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REPORTER'S RECORD

VOLUME 23 OF 32 VOLUMES

TRIAL COURT CAUSE NO. 98-CR-1391-A

- - - - - x  
THE STATE OF TEXAS : IN THE DISTRICT COURT  
VS. : 107TH JUDICIAL DISTRICT  
RUBEN GUTIERREZ : CAMERON COUNTY, TEXAS  
- - - - - x

PUNISHMENT PHASE

On the 10th day of May, 1999, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Benjamin Euresti, Jr., Judge Presiding, held in Brownsville, Cameron County, Texas.

Proceedings reported by machine shorthand.

A P P E A R A N C E S

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FILED IN  
COURT OF CRIMINAL APPEALS

DEC 8 1999

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ORIGINAL

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| 9  | Lorenzo Hernandez                      | 85        | 96        | 99         | ---        | ---                  | 23         |
|    | Ricardo Leal                           | 101       | 112       | 122        | ---        | ---                  | 23         |
| 10 | Michael Flores                         | 123       | 128       | ---        | ---        | ---                  | 23         |
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| 11 | Rita Alvarado                          | 150       | 179       | 198        | ---        | ---                  | 23         |
|    | Kip Van Johnson Hodge                  | 200       | 205       | ---        | ---        | ---                  | 23         |
| 12 | Alberto Gonzalez                       | 208       | 218       | 227        | ---        | ---                  | 23         |
|    | Rebecca RuBane                         | 234       | 240       | 242        | ---        | ---                  | 23         |
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## STATE'S EXHIBITS:

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## DEFENDANT'S EXHIBITS:

N/A

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1 P R O C E E D I N G S

2 (Open court, defendant present, no jury)

3 THE COURT: All right. You may be seated.  
4 Let me recall 98-CR-1391-A, State of Texas versus Ruben  
5 Gutierrez.

6 MR. BLAYLOCK: The State's present and  
7 ready, Judge.

8 THE COURT: Somebody have a motion?

9 MR. BLAYLOCK: Yes, Judge. I'd like to  
10 bring to the Court's attention that over the last week or  
11 so, the jail cell of the defendant was searched and found  
12 a list of all the jurors' names and, in particular, the  
13 jurors on this panel were circled with juror number 1,  
14 juror number 2, and had the name and the address of each  
15 juror.

16 What the State would like is to talk to  
17 each juror individually and ask if they've been  
18 contacted, intimidated, bribed in any way.

19 MR. REYES: Judge, that list was served  
20 upon my client by the District Attorney's Office  
21 themselves. So, if they're alleging that he obtained it  
22 in some other way, form or fashion, I mean, they're the  
23 ones that served it upon him. And we'd object to --

24 MR. BLAYLOCK: I just want to --

25 MR. REYES: -- them being questioned --

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1 THE COURT: Just a minute, counsel, okay?

2 MR. BLAYLOCK: Yes, sir.

3 THE COURT: They gave you an opportunity  
4 to talk; you give them an opportunity to talk.

5 MR. BLAYLOCK: Yes, sir.

6 THE COURT: I'll listen to both sides and  
7 then I'll make a ruling, all right?

8 MR. BLAYLOCK: I understand.

9 THE COURT: I don't want any  
10 interruptions.

11 Now, what's your --

12 MR. REYES: And we would object, Judge. I  
13 mean, they are under instructions that if anybody  
14 contacts them, for them to go ahead and advise the Court.  
15 And for us to question them regarding that would  
16 prejudice our client.

17 THE COURT: Okay. I'll just sustain the  
18 objection. And let the record state that the list that  
19 they're talking about is a master jury list --

20 MR. REYES: Yes.

21 THE COURT: -- that was typed up by the  
22 District Clerk's Office.

23 Anything further?

24 MR. BLAYLOCK: For the record, Judge, I'd  
25 like to state that we did not serve anything on anybody

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1 in this case. That's not our function. It's the  
2 District Clerk's Office.

3 THE COURT: All right. Anything else?

4 MR. REYES: Judge, we do have objections  
5 to their response to our request to disclose their intent  
6 to use extraneous offenses. I don't know if the Court  
7 wants me to go down each one of them right now --

8 THE COURT: The what now?

9 MR. REYES: We had filed a request for  
10 them to give us notice of their intent to introduce  
11 extraneous offenses.

12 THE COURT: In the punishment phase?

13 MR. REYES: Yes. And they have served us  
14 with a response. I don't know if the Court wants me to  
15 go down each one of them and list our objections at this  
16 point or wait until they present evidence regarding  
17 those -- what they listed.

18 THE COURT: How many objections are you  
19 going to have?

20 MR. REYES: About 20.

21 THE COURT: Is it the same objection or --

22 MR. REYES: Some of them are similar; some  
23 of them are different.

24 THE COURT: Okay. Are you going to be  
25 introducing these as a package, or one by one, or how are

1 you going to be --

2 MR. BLAYLOCK: Most of them will be in a  
3 package through the juvenile and adult probation  
4 department. There are some incidents of one on one.  
5 There are some witnesses that are going to testify to  
6 their individual acts.

7 MR. REYES: The only thing, Judge, is that  
8 we would have to make the same objections in front of the  
9 jury. So, if the Court just wants us to wait until that  
10 point, maybe it'll save some time.

11 THE COURT: Well, the jury's already  
12 seated. They're already -- I mean, they're in the jury  
13 room at this time waiting for us to begin.

14 MR. REYES: We would make the objection  
15 right before they attempt to introduce any evidence  
16 regarding that matter.

17 THE COURT: All right. I'll let you do  
18 that, then, at that point.

19 MR. REYES: The other thing, too, Judge, I  
20 wanted to --

21 MR. BLAYLOCK: Just before we go on,  
22 Mr. -- Danny, I'm sorry, Judge, but just to be fair, I  
23 want to inform the Court and the defense counsel, I  
24 intend to mention a good part of these extraneous  
25 offenses in my opening statement of what we intend to



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1 show.

2 THE COURT: All right.

3 MR. REYES: Then we need to make a record  
4 at this time, Judge, just to see whether or not they're  
5 going to be admissible or not.

6 THE COURT: Well, if you mention them, it  
7 doesn't mean they're admissible at this point. I haven't  
8 made a ruling on any of those yet. So I'll let you  
9 object to them when they offer them.

10 MR. REYES: Just for the record, we would  
11 ask that we be allowed to make the objections before,  
12 Judge.

13 THE COURT: On all of them or what?

14 MR. REYES: Yes. There's 20 of them.  
15 Some of them are juvenile adjudications which are  
16 inadmissible; and if he mentions them, then he's going to  
17 prejudice the jury.

18 THE COURT: All right. Let's handle the  
19 objections at this point so we can go through the hearing  
20 smoothly without any interruptions.

21 MR. REYES: Just for purposes of the  
22 record, I'm going to go based on the State's sixth  
23 amended response, Judge, if the Court wants to follow  
24 along. They've given us six -- five amended responses,  
25 and I'm going to go as to the last one.

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1 THE COURT: Go ahead.

2 MR. REYES: The first one, they're  
3 attempting to introduce evidence of a criminal mischief  
4 which occurred on or about October the 15th of 1995.

5 The first objection that we have as to all  
6 these offenses that they've listed is that the response  
7 is untimely. It was given to us -- the sixth motion or  
8 the sixth amended motion was given to us on April the  
9 19th of 1998 -- rather, 1999.

10 We filed our request for notice on  
11 February the 5th of 1999. And as the Court knows, we had  
12 already began -- or begun the trial on March 23rd of  
13 1999. So these responses are untimely. We ask that they  
14 not be introduced for that purpose.

15 We're also objecting to each and every one  
16 of the 20 offenses that they've listed as to relevance.  
17 We are alleging that they're attempting to introduce all  
18 these offenses to prove character and that he acted in  
19 conformity therewith, which is in violation of the Texas  
20 Code of Criminal Procedure. And we're also objecting  
21 because it would create an unfair prejudice against  
22 Mr. Gutierrez.

23 We're objecting because with respect to  
24 the criminal mischief offense, which is listed on the  
25 sixth amended motion, goes against special issue number

1 1, which the Court is very familiar with. They have to  
2 prove criminal acts of violence; and that has nothing to  
3 do with any criminal act of violence; and, therefore, it  
4 would be irrelevant.

5 MR. BLAYLOCK: My response, Judge, is that  
6 I'd ask you to take judicial notice of your file, first  
7 of all. There are six amended responses; and the ones  
8 that he's talking about right now are on the very first  
9 one filed way back on March the 4th. And even if it was  
10 April 19th, here we are at May the 10th. That's plenty  
11 of time that -- 37.07 says reasonable notice. That's 20  
12 some days, Judge.

13 In addition, the standard is not criminal  
14 acts of violence. It's anything the Court deems relevant  
15 including, but not limited to, the defendant's criminal  
16 history. And the rule in capital cases is even more lax,  
17 as the Court well knows. We don't even have to prove  
18 these incidents beyond a reasonable doubt. We only have  
19 to demonstrate them by clear and convincing evidence.

20 THE COURT: That objection will be  
21 overruled.

22 MR. REYES: I would object to his  
23 statement, Your Honor. The law specifically requires  
24 that they prove each and every one of the offenses which  
25 they're going to bring during the punishment phase beyond

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1 a reasonable doubt. So I would object, first of all, to  
2 him making a misstatement of law.

3 And I would also ask the Court to instruct  
4 him that if he is going to go ahead and have an opening  
5 statement, that he state the proper burden of proof with  
6 respect to those, the punishment phase.

7 MR. BLAYLOCK: My response to that, Judge,  
8 is to hand the Court Powell versus State. That's 821 --  
9 correction, 898 S.W.2d 821. I'm also handing a copy  
10 to --

11 MS. FISCHER: No, no. They're all three  
12 different cases.

13 MR. BLAYLOCK: My mistake, Judge. I can't  
14 give the defense attorney a copy at this time. My  
15 co-counsel will.

16 But in addition, I'll point the Court to  
17 866 S.W.2d 210 Adanandus versus State, and, in addition,  
18 the Powell versus State.

19 And all of these cases, Judge, Court of  
20 Criminal Appeal cases, say that the standard in a capital  
21 case, in the interest of policy of giving the jury all  
22 the information about the defendant that they need to  
23 make an informed decision about life or death, is clear  
24 and convincing. These cases clearly state that.

25 MR. REYES: Judge, in support of our

1 argument, we would cite Guerra versus State, which is at  
2 942 S.W.2d at 28, which specifically states that the  
3 burden of proof on the State of Texas with respect to the  
4 punishment phase is that of beyond a reasonable doubt.

5 THE COURT: Okay. Both of you are talking  
6 about two different things, all right? The burden of  
7 proof on producing extraneous offenses is what his  
8 argument is, not the burden of proof on proving the  
9 punishment phase of a trial or the issues in the  
10 punishment phase of a trial. This is on offer of proving  
11 up extraneous offenses.

12 MR. REYES: Well, that's what I'm talking  
13 about also. It says, "Requirements of proof beyond a  
14 reasonable doubt for extraneous offense evidence during  
15 the punishment phase is beyond a reasonable doubt."

16 And if they're talking about the special  
17 issues with respect to 1 and 2, the burden of proof is on  
18 the State of Texas and that burden is also beyond a  
19 reasonable doubt.

20 MR. BLAYLOCK: I agree with the second  
21 statement, not his first statement.

22 THE COURT: Okay. The objection will be  
23 overruled.

24 MR. REYES: With respect to --

25 THE COURT: You just have to watch your

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1 wording on that because as far as the burden on  
2 extraneous offenses versus your burden on proving the  
3 issues at the punishment phase --

4 MR. BLAYLOCK: Yes, sir.

5 THE COURT: -- are two different burdens.  
6 Okay. Go ahead.

7 MR. REYES: So, with respect to the burden  
8 as to extraneous offenses, the Court is overruling our  
9 objections?

10 THE COURT: Yes.

11 MR. REYES: If I can just hand the Court  
12 Guerra versus State.

13 May I proceed, Your Honor?

14 THE COURT: You may.

15 MR. REYES: With respect to offense number  
16 two, three and four that are listed, one being -- or the  
17 second one being driving while intoxicated which happened  
18 on or about August 27th of 1997, forgery which occurred  
19 on or about October 1st of 1994, and forgery which  
20 occurred on or about October 7th of 1994, we have three  
21 objections as to each one; that the notice to us was not  
22 given timely. It was given to us at or the time that we  
23 had already started jury selection in the trial and,  
24 therefore, that the notice was not timely.

25 We would also object because -- as to

1 relevance. It seeks to prove character and that the  
2 defendant acted in conformity therewith, which is in  
3 violation of the Code of Criminal Procedure.

4 And we would also object because it would  
5 create an unfair prejudice against Mr. Gutierrez. And it  
6 also goes as to special issue number 1, which requires  
7 that they show only criminal acts of violence. And that  
8 would clearly create a prejudice against Mr. Gutierrez.

9 THE COURT: That'll be overruled.

10 MR. REYES: With respect to the second  
11 page, Your Honor, the next offense is burglary of a  
12 habitation which occurred on or about April 30th of 1993.

13 The Code of Criminal Procedure  
14 Article 609, Section (d), specifically provides that any  
15 juvenile adjudications are not admissible at any adult  
16 proceeding. And this offense which they're attempting to  
17 introduce as evidence is a juvenile adjudication with  
18 respect to Mr. Gutierrez.

19 Again, we were not timely notified of this  
20 offense. We would object as to relevance because it goes  
21 to proving character or that he acted in conformity  
22 therewith. It would create an unfair prejudice against  
23 Mr. Gutierrez. And it also goes against special issue  
24 number 1, which requires that they only show criminal  
25 acts of violence.

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1 THE COURT: That'll be overruled.

2 MR. REYES: With respect to special  
3 issue -- I'm sorry, aggravated perjury that happened on  
4 or about August 27th of 1997, we would object that it  
5 wasn't timely -- the notice was not timely filed. It's  
6 irrelevant. It would also create an unfair prejudice  
7 against Mr. Gutierrez; and it also goes against special  
8 issue number 1, Your Honor.

9 THE COURT: That'll be overruled.

10 MR. REYES: Aggravated assault on a police  
11 officer and resisting arrest which happened on or about  
12 December the 5th of 1991, and criminal mischief which  
13 happened on or about December the 5th of 1991, as well as  
14 assault which happened on or about December the 5th of  
15 1991, we have the same objections.

16 These are juvenile adjudications which by  
17 their introduction would violate Code of Criminal  
18 Procedure Rule 609(d) -- or, rather, Code of Criminal  
19 Evidence Rule 609(d).

20 The notice was not timely given to us.  
21 These are irrelevant. They go as to proving character  
22 and that he acted in conformity therewith, which is in  
23 violation of the rules. And it also would create an  
24 unfair prejudice against Mr. Gutierrez.

25 THE COURT: That'll be overruled.



1                   MR. REYES: With respect to disorderly  
2 conduct, assault, which happened, the first one, on or  
3 about October 20th of 1998 and February the 2nd of 1998,  
4 we would object that we were not timely notified as to  
5 these two offenses.

6                   They are irrelevant. They go to prove  
7 character or that he acted in conformity therewith. It  
8 would create an unfair prejudice against Mr. Gutierrez.  
9 And with respect to the first offense, it goes against  
10 special issue number 1, Your Honor. It's not a criminal  
11 act of violence.

12                  THE COURT: That'll be overruled.

13                  MR. REYES: With respect to burglary of a  
14 habitation, we would object that, first of all, we were  
15 not timely notified. It goes also as to Criminal Rule of  
16 Evidence 609(d). It's a juvenile adjudication. It is  
17 inadmissible in this criminal proceeding.

18                  We would object that it is irrelevant. It  
19 would create an unfair prejudice against Mr. Gutierrez;  
20 and it also violates special issue number 1, Your Honor.

21                  THE COURT: That'll be overruled.

22                  MR. REYES: And we have exactly the same  
23 objections to the next offense which is terroristic  
24 threat which occurred on or about October the 9th of  
25 1992.

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1 THE COURT: That'll be overruled.

2 MR. REYES: And the same objection for  
3 terroristic threat which occurred on or about November  
4 the 25th of 1992.

5 THE COURT: That'll be overruled.

6 MR. REYES: They also are alleging an  
7 attempted escape, Your Honor, which occurred on or about  
8 March 1st of 1998. We would object that we were not  
9 timely notified. It goes -- we also object as to  
10 relevance. And also, it goes against special issue  
11 number 1 in that it is not a criminal act of violence.  
12 And it would create an unfair prejudice against  
13 Mr. Gutierrez.

14 THE COURT: It'll be overruled.

15 MR. REYES: With respect to the next few  
16 offenses, disorderly conduct which occurred on or about  
17 June 19th of 1995, disorderly conduct on or about June  
18 4th of 1959, and run away which happened on or about  
19 March 1st of 1993, we would object that these were not  
20 timely -- that notice was not timely given to us. We  
21 would object as to relevance, and that it would create an  
22 unfair prejudice.

23 And with respect to the last one, run  
24 away, that it is a juvenile adjudication and that it is  
25 not admissible under rule -- Criminal Rules of Evidence

1 Rule 609(d) .

2 THE COURT: That'll be overruled.

3 MR. REYES: The last two objections that  
4 we have are for terroristic threat which happened on or  
5 about April the 15th of 1999, and attempted escape which  
6 happened on or about April the 18th of 1999. We would  
7 object that these are irrelevant. They go to proving  
8 character or that he acted in conformity therewith, which  
9 is in violation of the rules, that it creates an unfair  
10 prejudice against Mr. Gutierrez. And we were not timely  
11 notified of these two offenses, Your Honor.

12 THE COURT: It'll be overruled.

13 MR. REYES: We also would object -- we  
14 believe that with respect to the terroristic threat which  
15 happened on or about April the 15th of 1999, that  
16 Mr. Blaylock, who is one of the assistant district  
17 attorneys in this case, in essence provoked Mr. Gutierrez  
18 which led to that offense, actually to that terroristic  
19 threat.

20 With respect to that, we have filed a  
21 subpoena. We are intending to subpoena him as a witness  
22 because we believe that he is the person that provoked  
23 Mr. Gutierrez; and we are asking that the rule be invoked  
24 and that Mr. Blaylock also be excluded as any other  
25 witness would be in this case because we do intend to

1 call him as a witness.

2 THE COURT: You're talking about the  
3 incident in the hallway?

4 MR. REYES: Well, the incident here in the  
5 courtroom which led to that incident out in the hallway.

6 THE COURT: That'll be overruled.

7 MR. REYES: Those are the objections that  
8 we have, Your Honor.

9 THE COURT: Okay. Anything further?

10 MR. REYES: Nothing further.

11 MR. BLAYLOCK: I have a motion, Judge. I  
12 move to quash this subpoena that I was just handed  
13 about -- the subpoena says 9:00, but I'm representing to  
14 the Court I was handed the subpoena about less than ten  
15 minutes ago.

16 And I -- whatever happened in the  
17 courtroom is on the record. If we want to read back the  
18 record, I certainly encourage defense counsel to read  
19 that back, but I move to quash the subpoena to call me as  
20 a witness.

21 THE COURT: Okay. I'll go ahead and order  
22 the subpoena quashed at this time.

23 MR. REYES: So we're being denied the  
24 opportunity to call Mr. Blaylock as a witness, Your  
25 Honor?

1                   THE COURT: That's correct. What happened  
2 in the courtroom is on the record.

3                   Anything further?

4                   MR. REYES: Nothing further.

5                   MR. BLAYLOCK: Nothing from the State,  
6 Judge.

7                   THE COURT: All right. Bring in the jury.

8                   THE BAILIFF: Yes, Your Honor.

9                   MR. REYES: Judge, at this time we would  
10 also invoke the rule.

11                  MS. FISCHER: Judge, I think all our  
12 witnesses are outside. No one sitting in here is going  
13 to be a punishment witness in the punishment phase of the  
14 trial.

15                  THE COURT: All right.

16                  (Jury brought into the courtroom)

17                  THE COURT: All right. You may be seated.  
18 Good morning, ladies and gentlemen of the  
19 jury.

20                  THE JURY: Good morning.

21                  THE COURT: First of all, excuse the  
22 delay. I had to take care of some legal matters before  
23 we could proceed.

24                  Secondly, I appreciate your patience in  
25 this trial. I know that it's been several weeks and days

1 since we were last here, but because of things beyond our  
2 control we were unable to continue this trial until  
3 today; and the Court appreciates your patience in this  
4 matter. I think we're ready to begin.

5 Mr. Blaylock?

6 MR. BLAYLOCK: Thank you, Judge.

7 Good morning.

8 THE JURY: Good morning.

9 MR. BLAYLOCK: I know that some of you --  
10 I know for a fact that some of you want this to be over.  
11 I expect and I believe that all of us, all of us want  
12 this to finally be over. It's gone on a long time. We  
13 met first in March, we met in April, and here we are on  
14 May 10th.

15 Well, your duty as a United States citizen  
16 is nearly over. You know, I don't have to remind you,  
17 that this system cannot work without you. We cannot have  
18 a judicial system and get justice, and there would be no  
19 accounting without you. So we do appreciate you being  
20 here.

21 In this, the punishment phase of the  
22 trial, the rules are a little bit different. The rules  
23 allow us to bring you a little bit more information about  
24 what we had over here. We'll be able to bring you a lot  
25 more information to show you what we're dealing with to

1 help you make a more informed decision.

2 And while we're doing that, I'm going to  
3 ask for your continued concentration and your focus on  
4 what happened here, on what happened in Cameron County on  
5 September of 1998 what happened.

6 I'm going to ask for three more things.  
7 I'm going to ask for your memory of everything that we  
8 put in before that came in through the witness stand.  
9 You must remember those things. I know we've had quite a  
10 break, but you must remember that heinous crime that was  
11 described by every witness.

12 I'm going to ask for your continued use of  
13 your reason and your common sense because that's the  
14 standard that was set out over 200 years ago, and that's  
15 what makes us function. That's what this is all about.

16 I'm going to ask for one more thing. We  
17 all talked about this on the individual voir dire part  
18 when we talked to you individually. I'm going to ask for  
19 your honesty in answering those three questions because  
20 the evidence is going to be overwhelming. And if you  
21 answer with your honesty and integrity based on your  
22 reason and common sense, there's only one answer to these  
23 three questions.

24 What we're going to show you is what  
25 you've already seen mainly. And when I talked to each

1 and every one of you and Ms. Fischer talked to you, you  
2 remember that we talked about the kinds of things that  
3 show future dangerousness.

4 And those kinds of things were show me a  
5 brutal crime for one thing. That's what you all said you  
6 wanted. Well, you remember the pathologist came in here  
7 and he said that 5-foot 4-inch 105-pound Ms. Harrison put  
8 up a little struggle. She had defensive wounds on her  
9 right hand, remember? She put up a little fight.

10 She battled them, but they killed her.  
11 And how did they do it? Well, they stabbed her 13 times  
12 in the head and the neck with two different screwdrivers.  
13 So that's pretty gruesome. And they hit her in the face.  
14 They kicked her, kicked her so hard that I believe her  
15 head impacted back against something and that's  
16 ultimately what killed her.

17 She was 85. She's one of the most  
18 vulnerable members of our whole society. We talked about  
19 that. Protect the kids, protect the old people because a  
20 society is ultimately judged how we take care of our very  
21 young and our very old.

22 And this is about as heinous as it gets,  
23 folks. You wanted to see some brutal facts before you  
24 could consider answering those questions in such a way  
25 that the ultimate penalty is imposed. Well, this is as



1 brutal as it gets.

2 That's not all. That's not all we're  
3 going to bring you. We're going to bring you more. The  
4 point I'm trying to make is you have enough right now  
5 with what you've already heard --

6 MR. REYES: I'm going to object, Your  
7 Honor, to counsel's statement. He's stating his own  
8 personal belief.

9 THE COURT: All right. I'll sustain the  
10 objection. Show them what you're going to prove,  
11 counsel.

12 MR. REYES: We would ask the Court to  
13 instruct the jury to disregard, Your Honor.

14 THE COURT: All right. Let's move on.

15 MR. BLAYLOCK: I intend to ask this Judge  
16 in a few minutes to reintroduce every single piece of  
17 evidence that's over there and that you've already heard  
18 from the witness stand.

19 This is a whole different phase of the  
20 trial. We talked about the two phases, the innocence and  
21 punishment. And on that evidence, that evidence I'm just  
22 going to ask him to re-admit what you've already heard is  
23 enough. It's enough, folks.

24 MR. REYES: I'm going to object to  
25 counsel's personal opinion regarding the proof.

1 MR. BLAYLOCK: Judge, I'm trying to  
2 summarize what the evidence has already been, remind  
3 them.

4 THE COURT: Just summarize it and go ahead  
5 and show them what you're going to prove in this phase.

6 MR. REYES: Can we have a ruling on the  
7 objection, Your Honor?

8 THE COURT: It'll be overruled.

9 MR. BLAYLOCK: What he doesn't want you to  
10 remember is the brutal facts of this crime. And what I  
11 request or I demand, folks, that you remember is what  
12 happened in this courtroom already. You've got to have  
13 your memory because we're not going to bring you every  
14 witness that we've already had. It would take too long.  
15 We're not going to start over.

16 And you can answer question 1, future  
17 dangerousness, just on the brutal nature of this death,  
18 the brutal nature of this murder.

19 And you know from those facts that you've  
20 already heard that he took part in the killing. If he  
21 didn't, he intended for her to die because she's the only  
22 witness. She's the one who can I.D. him. And he's the  
23 only one, he's the only one that she can I.D. because she  
24 knew him.

25 And at least he anticipated that she would

1 die when he walked into the house and he wanted her  
2 \$600,000. He knew she wasn't going to part with it. He  
3 knew that she would have to die; and he knew that he was  
4 going to leave no witnesses. So at least he anticipated  
5 it.

6 You can answer those questions right now  
7 with what you've already heard, but we are going to bring  
8 you some more. We're going to bring you much more.  
9 We're going to take you back to his juvenile probation.

10 His juvenile probation officer is going to  
11 come here. He's going to tell you when he was in school,  
12 he would tear up property, kick teachers, threaten to  
13 kill teachers.

14 He's going to tell you that an officer on  
15 one occasion came out to the school to take him into  
16 custody. He punched the officer in the face. He punched  
17 a cop when he was in school. The officer is going to  
18 come himself and tell you how he felt about that.

19 We're going to go on and tell you how he  
20 got probation for that. The juvenile probation officer  
21 tried everything she could. While he was on that  
22 probation, he picked up a burglary. So they brought him  
23 back; and they modified his probation and sent him to La  
24 Esperanza Home for Young Men, to try to help him, put him  
25 in a structured environment.

1                   He ran away. He escaped from there, ran  
2 away, and committed another burglary, picked up again.  
3 The Court showed mercy once more, sent him back to La  
4 Esperanza Home for Young Men. In three days he was gone  
5 again, ran away again.

6                   He was caught with another burglary,  
7 prosecuted this time and was sent to TYC. That's the  
8 Texas Youth Commission. That's the equivalent juvenile  
9 jail prison. And when you go to the juvenile jail, we'll  
10 have a witness tell you, that you just don't go do hard  
11 time in the juvenile system. They try to rehabilitate  
12 you.

13                   In this case, they sent him to the Rio  
14 Grande Military Institute. That's like a boot camp, a  
15 juvenile boot camp, to try to give him some structure,  
16 some discipline, some self-respect, respect for  
17 authority. He got there to the Rio Grande Military  
18 Institute and the next day he escaped. He ran away  
19 again.

20                   By this time he's about 17. The next time  
21 he gets caught, he had stole some checks from a law  
22 office. He had stole some checks and forged them. He  
23 got caught and was convicted of forgery.

24                   He was brought to this courthouse.  
25 Considering his record, he was shown mercy once more.

1 They put him on probation one more time. They sent him  
2 over to the adult boot camp, the Homer Salinas boot camp.  
3 He went there; and at the boot camp he was a discipline  
4 problem, wouldn't follow the orders, had no respect for  
5 authority.

6 Boot camp didn't want him. So they  
7 discharged him back to the county jail. And when he got  
8 back over here to our county jail, he started tearing up  
9 property, caused a small riot. They had to put him down.

10 He got convicted of that, too, criminal  
11 mischief, tearing up property. And guess what? He got  
12 more probation. He got probation again. He stayed in  
13 jail for awhile. They put him on probation.

14 When he got out on that probation, he  
15 picked up a D.W.I. like that. When they brought him to  
16 court again for the D.W.I., he got more probation one  
17 more time. He's caught every break you can get in this  
18 system. He's caught every single one.

19 Then about a year later he had this  
20 terrible plan to go and get the money of Ms. Harrison and  
21 commits capital murder. That's what you're dealing with.

22 None of this that you've heard so far is  
23 going to indicate in any way that there is any excuse,  
24 anything that makes him less morally culpable for killing  
25 Ms. Harrison.

1                   You're not going to hear that he came from  
2 a bad home because he didn't. His mother tried to help  
3 him. He wouldn't have it. Nobody could help him. They  
4 all tried. There's nothing that makes it less morally  
5 culpable for what he did.

6                   Don't lose your focus. Don't lose your  
7 focus because when we're done presenting you all of  
8 this -- and that's not all we're going to present. We've  
9 got more.

10                  While he was in jail on this case, him and  
11 his codefendant, Rene Garcia, attempted an escape. They  
12 took a guard hostage. They held a shank, a shank which  
13 is a toothbrush with the brush part cut off, and they had  
14 sharpened it. They held it to the guard's throat, Rene  
15 Garcia did.

16                  And when that officer tried to struggle to  
17 get away, Ruben told him, "You'd better not do that.  
18 They'll kill you with the shank. They've got a shank.  
19 They'll kill you." He was in the cell across the hall,  
20 but he was directing, he was aiding, he was encouraging.

21                  Not only that, folks, but remember we were  
22 here on April 15th, we were all here, and then they were  
23 leading him back to custody. They were taking him out  
24 this door and down this hall. You've all seen this  
25 hallway.

1                   They had it cleared. The bailiffs, the  
2 two bailiffs, Roy and Frank, and there was two more  
3 bailiffs that had the hallway cleared for safety. They  
4 had a bailiff stationed at the end for safety. You've  
5 all seen the hallway. You've seen the back doors of the  
6 courts that lead into the hallway.

7                   While they were taking him back,  
8 inadvertently a woman went into the hallway. She comes  
9 out about this far from him. She looks at him, he looks  
10 at her. With two bailiffs right beside him, he says,  
11 "You'd better get her out of my way or I'll kill her,  
12 too. You'd better get her out of my way or I'll kill  
13 her, too." You can't tell me that there's not a future  
14 danger.

15                   That's not even all. There will be more.  
16 There will be more evidence that you'll hear from this,  
17 about an aggravated perjury. You'll hear more.

18                   But when we're done giving you all that  
19 over the next few days, they're going to get up and  
20 they're going to say -- they're going to say two things.  
21 They're going to try to change your focus again.

22                   They're going to try to divert your  
23 attention off of him. They're going to try to divert  
24 your attention off of what he did so that you don't see  
25 it for what it is; and they're going to say something

1 mitigating, some sufficient circumstance that makes him  
2 less morally blameworthy.

3 But we talked about that. The standard is  
4 not that you feel sorry for the sorry way that he turned  
5 out. This is the punishment phase of the trial. This is  
6 not the sympathy phase of the trial. It's the punishment  
7 phase. And that's got to be taken into account.

8 You'll have to set your emotion aside; and  
9 you'll have to answer these questions on your reason and  
10 your common sense and give an honest answer, not one  
11 where you just want the result to be something so you  
12 answer a certain way. You all said you could do that.  
13 I'm going to ask that you do that.

14 I look forward to presenting you all this  
15 evidence and at the end, I just ask for your honesty.

16 MR. REYES: We're going to reserve our  
17 opening statement, Your Honor.

18 THE COURT: All right. You may present  
19 your first witness, then.

20 MR. BLAYLOCK: Judge, at this time I move  
21 to reintroduce every exhibit that was admitted in this  
22 trial and all of the testimony that came from the witness  
23 stand.

24 MR. REYES: Subject to all the objections  
25 that we've made, Your Honor.



1 THE COURT: They'll be readmitted.

2 MS. FISCHER: The State would call Tina  
3 Hauff.

4 I'm sorry. This is Tina Pizana. Tina  
5 Hauff.

6 THE COURT: Would you raise your right  
7 hand, please?

8 (The witness was sworn in by the Court)

9 THE WITNESS: I do.

10 THE COURT: All right. You may be seated.  
11 You may proceed.

12 MS. FISCHER: Thank you, Judge.

13 TINA HAUFF,

14 having been first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. FISCHER:

17 Q. Good morning, Ms. Hauff.

18 A. Good morning.

19 Q. I need you to tell the jury your full name,  
20 please.

21 A. My name is Tina Hauff and I'm Mrs. Harrison's  
22 sister.

23 Q. Now, Ms. Hauff, I know you're not feeling very  
24 good this morning. You woke up this morning and felt  
25 like you had the flu, didn't you?

1           A.     That's right.

2           Q.     If you get to a point this morning where you  
3     don't feel good or you feel like you need to take a  
4     couple of minutes break, would you please tell the Judge,  
5     okay? I don't want you to get any sicker --

6           A.     Okay.

7           Q.     -- because you had to come up here today.

8                     Okay. Now, you say that you were  
9     Ms. Harrison's sister. Tell me, how many brothers and  
10    sisters did Ms. Harrison have?

11          A.     We were 12, total of 12.

12          Q.     Okay. And where did -- let's start with the  
13    first one in the list. How many -- where did Ms. --  
14    actually, Harrison is her married name. What was her  
15    maiden name?

16          A.     Cuellar.

17          Q.     So you all are the Cuellar family?

18          A.     All of us are Cuellar.

19          Q.     Who was your mommy and your daddy?

20          A.     My mother was Maria Luisa Cavazos Cuellar, and  
21    my father was Fermin Claudio Cuellar.

22          Q.     And where were they from?

23          A.     From Brownsville.

24          Q.     Okay. So you all are Brownsville natives all  
25    your life?

1           A.     Right.

2           Q.     Okay. And you had 12. Where did Ms. Harrison  
3 or Ms. Cuellar when she was your sister, where did she  
4 fall in the list?

5           A.     She was the second.

6           Q.     Okay. And what about you?

7           A.     I'm next to the last. I'm the eleventh one.

8           Q.     You're almost the baby?

9           A.     That's right.

10          Q.     Okay. Who is the baby?

11          A.     Agusto.

12          Q.     Okay. And just very briefly, if you don't  
13 mind, kind of run through all 12 of you.

14          A.     It was Agatha, who is dead already. She died,  
15 she had a stroke and died. And then Mrs. Harrison,  
16 Escolastica. And then Fermin, he passed away also. And  
17 then it's Luis; and then it's Pablo; and then it's  
18 Encarnacion; and then it's Estela, Willie, Moises,  
19 Agusto, Arabella, who is in a nursing home, and myself.

20          Q.     Okay. Ms. Hauff, let's talk for a little bit  
21 about Ms. Harrison. Let's talk about, first of all, her  
22 growing up. Did she take care of you when you all were  
23 growing up?

24          A.     Yes, she sure did. She was like our second  
25 mother --

1 Q. Okay.

2 A. -- all her life.

3 Q. What kinds of things would she do for you?

4 A. Well, she always saw that we had, you know,  
5 what we needed at home and especially after my daddy  
6 died.

7 Q. Okay. When did your daddy die?

8 A. My daddy died in 1952.

9 Q. Okay. And when Ms. Cuellar was at home before  
10 she got married, did she work?

11 A. Yes.

12 Q. What kind of things did she do?

13 A. She had a loan business.

14 Q. Okay. And was that here in Brownsville?

15 A. Yes, Cuellar Loan Company.

16 Q. Okay. And then somewhere along the way she met  
17 a man and married?

18 A. Right. Then later on she worked for Judge  
19 Dancy. After that, she opened a restaurant and --

20 Q. Do you know what the name of the restaurant  
21 was?

22 A. It was Casablanca Restaurant on 14th and Taft.  
23 We all were born there and lived there all our lives.

24 Q. Is that 14th and -- I'm sorry.

25 A. And Taft.

1 Q. Okay. And she opened a restaurant there at the  
2 house?

3 A. Right.

4 Q. Okay. And how long did she have that  
5 restaurant?

6 A. She had that restaurant for maybe four or five  
7 years. She met Robert there and they got married.

8 Q. Okay. And that was Robert Harrison?

9 A. Robert Harrison.

10 Q. Okay. And when Ms. Cuellar married  
11 Mr. Harrison, where did they live in?

12 A. At the time she was living on the upstairs of  
13 our old house there where she had the restaurant. That  
14 used to be our residence.

15 Q. Uh-huh. And after she got married to Robert,  
16 where did they move to?

17 A. Afterwards they bought a piece of property on  
18 Roosevelt right where Lopez Food Store is on Villa Verde  
19 and Roosevelt, the parking lot that used to be their home  
20 there. They built a little home there.

21 Q. Okay. And what did they do while they were  
22 living over there? What kind of -- did they have any  
23 businesses or anything?

24 A. Yeah. She was working for different  
25 conditions. She worked for Hygeia Milk Company; and then

1 she went to work for Hydrocol; and then she worked for  
2 Mr. Ikeman which had built aluminum doors.

3 Q. Okay.

4 A. And after that, they started -- when they were  
5 working for Hygeia, she started buying the property there  
6 on Morningside.

7 Q. Okay. And that was where at the time of her  
8 death she owned a mobile home park, and they called it  
9 Harrison's Mobile Home Park. Is that the piece of  
10 property you're talking about?

11 A. Correct. Uh-huh.

12 Q. Okay. So her and her husband bought that  
13 together. Do you remember about when that was?

14 A. It was in the '50's. I think it was '52, '53,  
15 around there.

16 Q. Okay. Now, all this time while she's married  
17 to Robert, you're still at home with your mama and daddy,  
18 right?

19 A. Right. Uh-huh.

20 Q. Okay. Would Ms. Cuellar come around, visit,  
21 take care of you guys?

22 A. All the time. All the time. Uh-huh.

23 Q. Okay. Now, after they bought the mobile home  
24 park, did they start a business there?

25 A. Well, she continued with the loan business on

1 the side; and she was working for different -- like I  
2 think -- when she moved there, built the house, I think  
3 she went to work for Ikeman --

4 Q. Okay.

5 A. -- Mr. Ikeman who just passed away recently.  
6 And then -- let's see. What else? That's about all she  
7 was doing, working for Ikeman and --

8 Q. And doing loans?

9 A. -- and doing the loan business. Uh-huh.

10 Q. But now, that piece of property, it wasn't a  
11 mobile home park --

12 A. It wasn't --

13 Q. -- when they --

14 COURT REPORTER: Excuse me. I need you  
15 all to talk one at a time, please.

16 THE COURT: Let her finish asking the  
17 question before you answer. Thank you.

18 THE WITNESS: Yes, sir.

19 Q. (BY MS. FISCHER) We've got to go a little bit  
20 slower, Ms. Hauff.

21 Okay. And you said it was a field. That  
22 was farmland back out in the '50's when they bought it,  
23 wasn't it?

24 A. Yes, ma'am. They used to farm there and plant  
25 cotton.

1 Q. Okay. Who would plant the cotton?

2 A. Robert.

3 Q. Now, at some point in time, did you stay close  
4 to Ms. Harrison even though she had moved off and started  
5 her own life?

6 A. Oh, yes.

7 Q. Okay.

8 A. We saw each other -- she almost -- every night,  
9 almost every night she came to visit us at the home --

10 Q. Okay.

11 A. -- at the farm.

12 Q. At the farm. Where were you all living at the  
13 time?

14 A. At -- my daddy had bought 40 acres on Oklahoma  
15 and Boca Chica. And she would always bring us ice cream  
16 or Cokes or something, all the time.

17 Q. Now, did her and Mr. Harrison have any  
18 children?

19 A. No, they didn't.

20 Q. Okay. Now, what about yourself, do you have  
21 any children?

22 A. I have four children.

23 Q. Okay. What about grandchildren?

24 A. I have three grandchildren.

25 Q. Okay. So I assume there's -- I think that you



1 told me there's nine of you all still living, right?

2 A. Right.

3 Q. And I assume most of them had children?

4 A. Yes.

5 Q. Okay. So Ms. Harrison had a lot of nieces and  
6 nephews?

7 A. Exactly.

8 Q. Did she spend a lot of time with them?

9 A. A lot of time -- with my children she spent a  
10 lot of time and the ones that lived here because most of  
11 my brothers are out of town.

12 Q. Okay. Now, while she was there, they had the  
13 land over on 409 Morningside. At some point in time  
14 Ms. Harrison decided that she was going to go to school,  
15 didn't she?

16 A. Yes.

17 Q. Can you tell the jury why your sister decided  
18 that she wanted to go to school?

19 A. Well, she wanted to improve herself and she  
20 wanted -- she was tired of being a secretary and not  
21 making it. And she wanted to -- she had the knowledge  
22 and she wanted to go on and be a teacher. She loved  
23 being with children. So --

24 Q. Now, you were kind of an inspiration for all  
25 that, weren't you, Ms. Hauff?

1           A.    Yes.  Well, when she voiced, you know, that she  
2   wanted to go to school, and I was already a nurse, and I  
3   said, "Okay."

4                   And she said, "But I need money."

5                   And I said, "Well, I'll help you."  So --

6           Q.    Did you help her go to school?

7           A.    Yes.  Uh-huh.

8           Q.    Where did she go to college?

9           A.    She went to Southmost here in Brownsville and  
10   she started -- she was doing substitute teaching.

11          Q.    And where was she substitute teaching at?

12          A.    She would substitute wherever they called her,  
13   but mostly it was at Victoria Heights, Cromack, and some  
14   at Castaneda.

15          Q.    Okay.  And did she finally graduate from Texas  
16   Southmost?

17          A.    Yes, she did.

18          Q.    Okay.  And did she graduate with a teaching  
19   degree?

20          A.    Then she went on to Pan American; and they  
21   would car pool, several of the principals that were going  
22   back to school at the time.  And she started teaching  
23   with a teacher's certificate.

24          Q.    Okay.  And do you remember about when that was  
25   that she started teaching?

1           A.     It was about '61 I would say.

2           Q.     Okay. And where did she start her career as a  
3 teacher?

4           A.     At Cromack.

5           Q.     Okay. And how long did she stay there at  
6 Cromack as a teacher?

7           A.     All her life there until she retired.

8           Q.     And when did she retire?

9           A.     She retired -- I cannot remember, but it had to  
10 be like in '89 or '88, around there.

11          Q.     Okay. And was Mr. Harrison alive during all  
12 this time?

13          A.     Yes. Uh-huh.

14          Q.     And they never had any children?

15          A.     Never had any children.

16          Q.     But she had her kids at school. She taught  
17 young children at school?

18          A.     Oh, yes. Uh-huh.

19          Q.     Okay. Now, her husband, Mr. Harrison, is no  
20 longer alive, is he?

21          A.     No. He passed away with cancer in '92, I  
22 believe, '91 or '92.

23          Q.     Okay. How did Ms. Harrison take that?

24          A.     Very, very bad because they had been together  
25 all their life just about, 40 some years.

1           Q.    Now, she had already retired when Mr. Harrison  
2 passed away.  What did she do then?  After Mr. Harrison  
3 was gone and she was retired from teaching, what kind of  
4 work did she do then?

5           A.    Well, Robert by that time was not feeling too  
6 good.  So she just about took over with the trailer park.  
7 And she would do substitute teaching, a lot of substitute  
8 teaching even though she was retired.

9           Q.    Okay.

10          A.    And she would do tutoring at home also.

11          Q.    And this is the same Harrison Mobile Home Park  
12 where she was killed last September?

13          A.    Right.

14          Q.    Now, somewhere along the way she got somebody  
15 to come in and help.  Somebody moved in and helped her;  
16 that's one of your nephews, Avel, right?

17          A.    Right.

18          Q.    And he came in and helped her out right about  
19 the same time that Mr. Harrison passed away?

20          A.    It was right after he passed away.  Uh-huh.

21          Q.    Okay.  Now, let's talk about her last few years  
22 of her life.  Ms. Hauff, were you close --

23          A.    Yes.

24          Q.    -- to your oldest sister?

25          A.    No.  She --

1           Q.    The very oldest is a girl.  Is she still  
2 living?

3           A.    No.  She's deceased.

4           Q.    So this is your very oldest, oldest sister?

5           A.    (Nods head).

6           Q.    Okay.  Would you consider yourself the one that  
7 she was closest to?

8           A.    Probably so because I -- we called each other  
9 on the phone almost every day.

10          Q.    Okay.  What kind of things would you all do?

11          A.    I would take her out at night, you know.  
12 Towards the end I would pick her up at night and take her  
13 over to my house to eat supper --

14          Q.    Okay.

15          A.    -- or I would take -- bring supper to her and  
16 she wanted -- showed interest in wanting to go out  
17 because she didn't like to leave her home.  And I would  
18 take her out riding; and I would tell her, "Let's go  
19 cruising, you know."  So I would just put her in the car  
20 and just play some music for her; and she was relaxed and  
21 was having a good time all the time she was with me.

22          Q.    What kind of music did she like to listen to?

23          A.    She liked to listen to the oldies, the old, old  
24 music from the '30's and '40's.

25          Q.    And you and I talked about this.  This is even

1 way before my time. She really enjoyed music from the  
2 '30's.

3 A. And I had some albums of Billy Vaughn and all  
4 the oldies, and she loved that tape. She wanted me to  
5 play it all the time.

6 Q. Would she do that when you all came over to the  
7 house?

8 A. Yes, ma'am.

9 Q. Now, you and I, we've talked about  
10 Ms. Harrison's life on several times; and you've told me  
11 many wonderful things about her. You would oftentimes  
12 bring over another sister that you had, one that was in  
13 the nursing home; and the three of you would spend time  
14 together.

15 A. Right.

16 Q. Did you all do that in the last few months of  
17 her life?

18 A. Oh, yes. Uh-huh.

19 Q. Okay. What would -- which sister would you  
20 bring over?

21 A. Arabella.

22 Q. Okay. What would you all do?

23 A. I would bring them home and I'd fix her hair --  
24 both of them, fix up their hair and dress them up. And  
25 sometimes she would put on some of my dresses even though

1 they were kind of big on her, but she liked --

2 Q. Is that Ms. Harrison?

3 A. Uh-huh.

4 Q. Yeah. She was a pretty skinny lady.

5 A. Yeah. And anyway, she would just -- I would  
6 feed them and then -- or feed them -- if it was late in  
7 the evening, I'd give them watermelon or papaya, whatever  
8 I had in the home, or ice cream. And then we'd play  
9 music and talk, you know. I'd trim her toenails and soak  
10 her feet, you know. I just babied them all the time.  
11 So --

12 Q. Right before she was killed, how often did you  
13 get to see her?

14 A. Almost on a daily basis.

15 Q. Okay. Ms. Hauff, tell me, how has your life  
16 been affected since she was murdered?

17 A. Very bad (weeping).

18 Q. Okay. Do you miss her?

19 A. Very much.

20 Q. What do you miss the most about her?

21 A. Calling her and talking to her on the phone.

22 Q. How is your own personal life different since  
23 she was murdered?

24 A. Very bad. I got very depressed.

25 Q. Did you have some problems at work because of

1 that?

2 A. Yes. I had to quit my job because I couldn't  
3 function, you know. And any time I'm outside, I come in  
4 the house and the first thing I want to do is call her.

5 Q. You can't do that anymore, can you?

6 A. No. Any time I had a problem, I would call  
7 her, or anything good to tell her, I would call her; and  
8 she was the only one that I shared my happiness and my  
9 sadness with. My children, you know, any time they  
10 called me and she wanted to know what they were doing  
11 because they're all out of town.

12 Q. Was she close to your children?

13 A. Very close. And she wanted to go to my  
14 daughter's wedding, but she couldn't go. She married on  
15 July the 19th in Houston.

16 Q. That was one of the last things that she missed  
17 in her lifetime was your daughter's wedding?

18 A. That's right.

19 MS. FISCHER: Your Honor, I pass the  
20 witness.

21 MR. GALARZA: I have no questions, Your  
22 Honor.

23 THE COURT: All right. You may step down.  
24 Thank you.

25 You may call your next witness.



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1 MS. FISCHER: The State calls Tina Pizana.

2 THE COURT: Would you raise your right  
3 hand, please?

4 (The witness was sworn in by the Court)

5 THE WITNESS: I do.

6 THE COURT: You may be seated.

7 ERNESTINA PIZANA,

8 having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. FISCHER:

11 Q. Ms. Pizana, I need you to tell the jury your  
12 full name, please.

13 A. My name is Ernestina Pizana known as Tina  
14 Pizana.

15 Q. And what do you do for a living?

16 A. I'm a juvenile probation officer.

17 Q. And how long have you been a juvenile probation  
18 officer?

19 A. Twenty-five and a half years.

20 Q. And those 25 and a half years, have you been  
21 employed by the same place?

22 A. Yes, ma'am.

23 Q. And what is that?

24 A. Cameron County juvenile probation.

25 Q. Okay. Now, can you please tell the jury what a

1 juvenile probation officer does?

2 A. We work with children between the age of ten to  
3 17 -- or 16, 17 if they commit an offense before they  
4 turn 17; and we have jurisdiction until they're 18.

5 These are children that get into trouble with the law or  
6 have home problems or run away or have truancy problems.

7 Q. And you know the reason why you're here today  
8 is because a woman by the name of Escolastica Harrison  
9 was murdered back on September the 5th of 1998. Now, you  
10 knew Ms. Harrison, didn't you?

11 A. I remember -- I used to know her when I was a  
12 child. She used to live in the same area that we did.

13 Q. And in fact, the Tina that was here just before  
14 you, you're named after her, aren't you?

15 A. Yes, ma'am.

16 Q. How did that come about?

17 A. My older sisters used to associate with -- they  
18 were best friends with Tina. So they liked her and they  
19 liked her name, so I ended up getting her name.

20 Q. When you -- I guess what I want to say is  
21 little did you know when you were a child that some day  
22 you'd to have come to this courtroom and face  
23 Ms. Harrison's killer?

24 A. Yes, ma'am. I had no idea.

25 Q. So let's talk about that. During your job as a

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1 juvenile probation officer, long before any of this ever  
2 happened, did you have the opportunity to supervise a  
3 juvenile by the name of Ruben Gutierrez?

4 A. Yes, ma'am.

5 Q. Okay. Ms. Pizana, do you see Mr. Gutierrez  
6 here in this courtroom today?

7 A. No, ma'am. He's being blocked by --

8 Q. Do you know he's in the courtroom?

9 A. Yes, ma'am.

10 Q. But you just can't see him. If you want to  
11 step down, I need you to point him out to me.

12 A. He's right there wearing a white shirt with a  
13 black tie (pointing).

14 Q. Thank you, ma'am.

15 MS. FISCHER: Your Honor, may the record  
16 reflect that she has identified the defendant?

17 THE COURT: It shall reflect.

18 MS. FISCHER: Your Honor, may I approach  
19 the witness?

20 THE COURT: You may.

21 Q. (BY MS. FISCHER) Ms. Pizana, I'm going to  
22 show you what has been marked as State's Exhibit P1,  
23 that's Punishment Number 1, which is a juvenile --  
24 certified copy of a juvenile judgment. I'm going to ask  
25 you the name on there, it says, "In The Matter of Ruben

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1 Gutierrez --"

2 MR. REYES: I'm going to object to counsel  
3 reading from something that has not been admitted into  
4 evidence, Your Honor.

5 THE COURT: Let her identify it first,  
6 counsel, and then offer it.

7 Q. (BY MS. FISCHER) I want you to take a look at  
8 this. Do you recognize this judgment?

9 A. Yes, ma'am.

10 Q. Okay. Is this judgment, which is entitled "In  
11 The Matter of Ruben Gutierrez --"

12 MR. REYES: I'm going to object, Your  
13 Honor, to counsel reading what has not been admitted into  
14 evidence.

15 THE COURT: Just let her identify it.

16 Can you identify that?

17 THE WITNESS: Yes, sir.

18 THE COURT: Go ahead.

19 Q. (BY MS. FISCHER) And is this judgment the  
20 same judgment that you supervised Mr. Gutierrez on?

21 A. Yes, ma'am.

22 Q. Is that the same Mr. Gutierrez sitting here in  
23 the courtroom that you just pointed out a few minutes  
24 ago?

25 A. Yes, ma'am.

1 MS. FISCHER: Your Honor, we're going to  
2 offer P1 into evidence. It is a certified copy of a  
3 juvenile court judgment.

4 (Brief pause in proceedings)

5 MR. REYES: Judge, we're going to object,  
6 first of all, that the notice was not timely given to us  
7 after we filed a request that the State inform us of any  
8 extraneous offenses that they intended to introduce. We  
9 would object as to relevance.

10 We would object also because it creates an  
11 unfair prejudice. We would object because it is not an  
12 act involving criminal acts of violence. And we would  
13 object also because the Code of Criminal -- the Code  
14 of -- the Criminal Rules of Evidence, specifically  
15 Rule 609(d), specifically prohibits any juvenile  
16 adjudications from being admissible in a criminal  
17 proceeding.

18 THE COURT: It'll be overruled.

19 MR. REYES: And we would also object, Your  
20 Honor, one further objection, that by the introduction of  
21 the judgment or State's Exhibit P1 we are effectively  
22 being denied the opportunity to cross-examine any of the  
23 witnesses that would be called to prove up that offer.

24 THE COURT: That'll be overruled. It'll  
25 be admitted.

1 (State's Exhibit Number P1 admitted)

2 Q. (BY MS. FISCHER) Ms. Gutierrez, I'm going to  
3 show you what has been marked as --

4 A. Pizana.

5 Q. Pizana. I'm sorry. That's my mistake. What  
6 has been marked as State's Exhibit Number P3. I want you  
7 to take a look at this document and tell me, do you  
8 recognize what this document is?

9 A. Yes, ma'am.

10 Q. Okay. Now, knowing what this document is, the  
11 person who this document belongs to, is he here in the  
12 courtroom today?

13 A. Yes, ma'am.

14 Q. Is that that same Ruben Gutierrez that you  
15 previously pointed out?

16 A. Yes, ma'am.

17 Q. Okay.

18 MS. FISCHER: Your Honor, at this time  
19 we'd offer into evidence what has been marked as State's  
20 Exhibit P3, which is also a certified copy of a juvenile  
21 court judgment.

22 (Brief pause in proceedings)

23 MR. REYES: We would have the same  
24 objections, Your Honor, that we previously made to  
25 State's Exhibit P1.

1 THE COURT: They'll be overruled. Three  
2 will be admitted.

3 (State's Exhibit Number P3 admitted)

4 Q. (BY MS. FISCHER) Now, Ms. Pizana, let's talk  
5 about, then, the very first time that you came in contact  
6 with the defendant. Will you please tell the jury when  
7 that was?

8 A. It was back on December of '91.

9 Q. Okay. And why was he there to see you?

10 A. Well, at first he had been -- he had already  
11 been referred to us for felony 3 criminal mischief,  
12 assaulting a police officer, and assaulting -- just an  
13 assault, and criminal mischief.

14 Q. Okay. And what was his purpose in coming to  
15 see you?

16 A. He was pending going to court. So we go  
17 through -- with all juveniles we try to counsel with  
18 them, get to know them before we go to court.

19 Q. Okay. And your goal in going to court, then,  
20 is to try and help them out of this trouble?

21 A. Yes, ma'am.

22 Q. Okay. So, then, did you go to court with  
23 Mr. Gutierrez?

24 A. Yes, ma'am.

25 Q. Okay. At some point in time was he placed on

1 probation for those offenses you talked about, the  
2 criminal mischief, aggravated assault, resisting arrest  
3 and assault?

4 A. That's what he was charged with. They filed a  
5 criminal mischief B; and that's what he was placed on  
6 probation for.

7 Q. Okay. Is that -- and if you don't mind --

8 MS. FISCHER: Your Honor, may I approach?

9 THE COURT: You may.

10 Q. (BY MS. FISCHER) Is that this juvenile  
11 judgment right here, P1? This was the first time that he  
12 was placed on juvenile probation --

13 A. Yes, ma'am.

14 Q. -- here in Cameron County?

15 A. Yes, ma'am.

16 MS. FISCHER: Your Honor, may I publish  
17 State's P1 to the jury?

18 THE COURT: You may.

19 Q. (BY MS. FISCHER) So, now he's on juvenile  
20 probation. What are you doing to work with him at this  
21 point in time?

22 A. He had -- at this time he was allowed to remain  
23 at home under the care and custody of his mother; and we  
24 tried counseling with them. He was ordered to go to  
25 MHMR, but the mother opted to do home private counseling.



1 So he was going to counseling with Dr. James Freeberg.

2 Q. Okay. Now, let's stop right there for a  
3 minute. You said that the mother opted to do her own  
4 counseling. How was Mr. Gutierrez' mother? Was she  
5 cooperative?

6 A. Yes, very cooperative.

7 Q. Okay. Did she try to help you help Ruben?

8 A. She was always coming in for hearings if she  
9 could. I know a couple of times she couldn't because she  
10 was working, but the majority of the time she'd be there  
11 willing to assist us, coming for appointments, taking him  
12 wherever he needed to go.

13 Q. Okay. And you said that she would be working.  
14 She was employed rather successfully as running an  
15 apartment complex, was she not?

16 A. Yes, ma'am.

17 Q. Okay. She was always there for Ruben and would  
18 help you and, in fact, tried to get him counseling?

19 A. Yes, ma'am.

20 Q. Okay. Did that work? Were you able to help  
21 him?

22 A. For awhile --

23 MR. REYES: Judge, I'm going to object as  
24 to relevance.

25 THE COURT: Overruled.

1           A.     For awhile he did okay, but then he messed up  
2 again.

3           Q.     (BY MS. FISCHER) Okay. When you say messed  
4 up again, what happened next?

5           A.     During the summer -- he was adjudicated in May.  
6 So during the summer he did --

7                     MR. REYES: I'm going to object, Your  
8 Honor, to any relevance. She's going outside the scope  
9 of State's Exhibit P1 and State's Exhibit P3.

10                    THE COURT: Overruled.

11                    MR. REYES: We would also object, Your  
12 Honor. It goes outside the scope of the criminal  
13 mischief and the theft which are State's Exhibits P1 and  
14 P3.

15                    THE COURT: That'll be overruled.

16                    Go ahead.

17           Q.     (BY MS. FISCHER) Okay. You say he was  
18 adjudicated in May. During the summer did he do okay?

19           A.     For awhile. Then he got into trouble again  
20 by -- he was alleged to have committed another burglary  
21 of habitation -- burglary of habitation.

22           Q.     Okay. And when he was alleged to have  
23 committed that burglary of habitation, what did you, as  
24 his juvenile probation officer, do to try and help  
25 Mr. Gutierrez again?

1           A.     We continued working with him pending the  
2 paperwork that had to be submitted from the law  
3 enforcement agencies.

4           Q.     Okay. And after that paperwork was submitted,  
5 did you all change Mr. Gutierrez' rehabilitation plan  
6 there at the probation department?

7           A.     The District Attorney filed a motion to modify  
8 in January. So that's when it was modified.

9           Q.     Okay. What was he modified to?

10          A.     Well, in February he pled -- they filed  
11 burglary of habitation and truancy. So he pled to  
12 truancy only. So at the time his probation conditions  
13 were modified; and he was placed in La Esperanza Home for  
14 Boys.

15          Q.     Okay. Now, what is the La Esperanza Home?  
16 What is that?

17          A.     It's a home for boys that get into trouble with  
18 the law. They have counselors there. They live there;  
19 and they try to work with them, counseling with them,  
20 taking them to school, and making sure that they do  
21 everything at school or at home and stay out of trouble.

22          Q.     So it is a placement outside of the home. At  
23 this point in time, you were taking him away --

24          A.     Yes, ma'am.

25          Q.     -- from the mother? Up to this point, had

1 Ms. Gutierrez been helpful in trying to help you help the  
2 defendant?

3 A. Yes, ma'am. She was always there.

4 Q. Okay. He was placed in La Esperanza I think  
5 you said in February. Do you remember when in February?

6 A. February 17th of '93.

7 Q. Did he stay there?

8 A. No. He ran away in March 8th.

9 Q. So, he went in February 17th; by March the 8th  
10 he had already run away?

11 A. Yes, ma'am.

12 Q. After he ran away, what did you all do with  
13 him?

14 A. He was on run-away status until 5/19/93. At  
15 that time he was taken into custody from the directive  
16 that had been issued; and he was charged with burglary of  
17 habitation.

18 Q. Okay. After you take him into custody for  
19 running away, what did you all do with him at that point?

20 A. He was in detention for awhile. Then the Judge  
21 released him and allowed us to place him back at La  
22 Esperanza Home for Boys pending another hearing on these  
23 pending charges.

24 Q. And you said it was burglary of a habitation.  
25 Did he have any other charges besides burglary of

1 habitation at that point?

2 A. Yes. When the police officers arrested him, he  
3 resisted arrest and they charged him with criminal  
4 mischief. He apparently kicked the windows to the --

5 MR. REYES: Judge, I'm going to object to  
6 hearsay.

7 THE COURT: It's overruled.

8 A. He was alleged to have kicked in the unit and  
9 the patrol unit -- radio in the unit, and also the  
10 windows of the patrol unit. So they added a resisting  
11 arrest and criminal mischief.

12 Q. (BY MS. FISCHER) Ms. Pizana, you have  
13 reviewed the files of Ruben Gutierrez prior to coming to  
14 court here today, haven't you?

15 A. Yes, ma'am.

16 Q. And all of this information, is that  
17 information that you obtained while reviewing the  
18 juvenile file of the defendant, Ruben Gutierrez?

19 A. Yes, ma'am.

20 Q. Okay. So after you had him back in custody for  
21 committing the new offense and the run aways that he had  
22 done from La Esperanza, you put him back in La Esperanza.  
23 How did he do this time?

24 A. He ran away shortly thereafter.

25 Q. Okay. When you say shortly thereafter, how

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1 long did he stay?

2 A. He ran away on 6/10.

3 Q. When had he been placed there?

4 A. Pardon?

5 Q. What -- if he ran away on June the 10th, when  
6 had he gotten to La Esperanza?

7 A. June 7th.

8 Q. All right. This is the second time he ran  
9 away. Did you all ever catch up with him again?

10 A. He was taken into custody back in September.

11 Q. Okay. And when you took him into custody this  
12 time, why were you taking him into custody?

13 A. He was charged -- he was taken into custody on  
14 the order taking child into custody; and he was alleged  
15 to have committed another burglary.

16 Q. Okay.

17 MS. FISCHER: Your Honor, may I approach  
18 the witness?

19 THE COURT: You may.

20 Q. (BY MS. FISCHER) Ms. Pizana, I'm going to ask  
21 you to look at P3. You said that he was charged with  
22 another burglary. Did he go to court about that other  
23 burglary?

24 A. Yes, ma'am.

25 Q. And did he plead true and got on probation

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1 again?

2 MR. REYES: I'm going to object, Your  
3 Honor, to hearsay.

4 THE COURT: Overruled.

5 Q. (BY MS. FISCHER) P3, is this the second time  
6 that he was on juvenile probation with the Cameron County  
7 juvenile probation department?

8 A. That's the second time he was adjudicated, but  
9 that time he was committed to the Texas Youth Commission.

10 Q. Okay.

11 MS. FISCHER: Your Honor, may I publish P3  
12 to the jury?

13 THE COURT: You may.

14 MS. FISCHER: Thank you, Your Honor.

15 Q. (BY MS. FISCHER) Okay. I think we're now in  
16 September of '93. We have Mr. Gutierrez back in custody.  
17 What happened this time?

18 A. When they went to court?

19 Q. Yes.

20 A. Okay. He was -- he pled true to burglary of  
21 habitation. He was found to be a delinquent child; and  
22 he was committed to the Texas Youth Commission.

23 Q. At this point in time, is your part of the job  
24 in trying to help Mr. Gutierrez over?

25 A. Yes, ma'am.

1           Q.    Okay.  Now, let's talk a little bit about some  
2 of the things that you did to help Mr. Gutierrez.  I know  
3 that there are a lot of specific programs that we've  
4 mentioned; La Esperanza, his mother giving him private  
5 counseling.

6                       Let's start with you as a juvenile  
7 probation officer.  Tell the jury, what kind of things  
8 did you try to do to help Mr. Gutierrez make something of  
9 his life?

10          A.    There was counseling when he would come in.  
11 Lots of times he wouldn't.  He'd fail to show up.  So I'd  
12 have to call his mother.  The mother would bring him in.  
13 And what we did, we would talk about how he had to comply  
14 with the orders of the court, going to school, behaving.

15                       We even got him -- at that time the  
16 juvenile probation department had a program which was  
17 called the H.O.P.E. program, Help One Student -- One  
18 Person to Excel.  What we did is we got seniors that were  
19 majoring in law enforcement to work with our juveniles  
20 for ten hours a week in either recreation, education,  
21 whatever they deemed necessary, to get them interested in  
22 something else, something positive.

23                       So, we also referred him to that program  
24 hoping that he would create new interests and new  
25 friends.



1 Q. Did he succeed in the H.O.P.E. program? '

2 A. No, ma'am.

3 Q. What happened then -- I mean, what happened  
4 there?

5 A. He wouldn't keep his appointments according to  
6 the worker -- the student that was working with him.  
7 Sometimes he would go to the home. He wouldn't -- Ruben  
8 wouldn't be home. The mother would have to get on the  
9 phone and call three or four places before finding him.  
10 So finally they terminated him from that program as well.

11 Q. Did you ever go out and pay a home visit to the  
12 Gutierrez home?

13 A. Yes, ma'am.

14 Q. What kind of family -- what kind of home life  
15 did he have? Was it a nice home?

16 A. It was a very nice apartment, nicely furnished.  
17 Ms. Gutierrez kept a nice apartment.

18 Q. Seem to be plenty of food in the kitchen?

19 A. It appeared so.

20 Q. Okay. Was it clean?

21 A. Yes, ma'am.

22 Q. Did he have his own room?

23 A. Yes, ma'am.

24 Q. Was there anything else that you specifically  
25 did? You placed him in the H.O.P.E. program. When you

1 saw him when he bothered to show up for his appointments,  
2 how often was he supposed to meet with you?

3 A. He was supposed to come on a weekly basis.

4 Q. Okay. About how many times out of -- you know,  
5 four times in a month he's supposed to come see you. How  
6 many times would he actually come?

7 A. Sometimes he'd be very good; and then all of a  
8 sudden he wouldn't come at all. I would have to call him  
9 in order for the mother to bring him in.

10 Q. When you are trying all these various avenues,  
11 counseling with him, trying to get him in special  
12 programs to get new interests, how is the defendant  
13 responding? Can you describe to the jury how he acted  
14 towards you?

15 A. With me, he was always very polite and very  
16 well mannered. As far as when he came into the office,  
17 never had any problems.

18 Q. Okay. But then would you encourage him to go  
19 out and do good with his life?

20 A. Yes.

21 Q. What would he do then?

22 A. At school was his major problem. He wouldn't  
23 submit to the supervision of the teachers.

24 MR. REYES: I'm going to object, Your  
25 Honor, as to hearsay.

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1 THE COURT: Overruled.

2 MR. REYES: Can we have a running  
3 objection, Your Honor?

4 THE COURT: You may.

5 A. The complaints from the principals was that --

6 MR. REYES: Objection, Your Honor.  
7 Hearsay.

8 THE COURT: Overruled.

9 A. -- that he would misbehave in class. He was  
10 disrespectful. He would go to the classroom and sleep.  
11 He wouldn't do his work.

12 Q. (BY MS. FISCHER) Is that part of your job as  
13 his juvenile probation officer is to check up and make  
14 sure he's doing okay in school?

15 A. Yes, ma'am.

16 Q. Okay. Now, family help, you said time and time  
17 again Ms. Gutierrez tried to work with you every way that  
18 she possibly could. How did she act towards you? Did  
19 she act like she was trying to help her son --

20 A. Yes, ma'am.

21 Q. -- stay out of trouble?

22 A. Yes, ma'am.

23 Q. Okay. Is there any other type of help that you  
24 tried to give Mr. Gutierrez?

25 A. At one time before placing him at La Esperanza,

1 they advised that they had a family in Florida that might  
2 be willing -- that would be willing to take him in. We  
3 went through the Interstate Compact --

4 MR. REYES: I'm going to object as to  
5 hearsay, Your Honor.

6 THE COURT: Overruled.

7 A. -- which is our procedures. We can't just send  
8 a child off without knowing what kind of a home it is.  
9 So, Interstate Compact, which is an agency in Austin,  
10 contacts Florida, juvenile probation authorities; and  
11 they do an investigation and talk to the family.

12 We waited for the response. And we  
13 finally got a response that the family --

14 MR. REYES: Objection, Your Honor.  
15 Hearsay.

16 THE COURT: Overruled.

17 A. -- the family had not been aware that Ruben was  
18 in trouble and, apparently, they didn't think they would  
19 be good role models because they had children of their  
20 own that were in trouble. So they refused to keep Ruben.

21 Q. (BY MS. FISCHER) Ms. Pizana, how did Ruben  
22 Gutierrez act when you would tell him, "Look, you're  
23 messing up, you know. You need to do better"?

24 A. In the office with me, he'd agree, and he was  
25 polite and all that and say he'd go to school or he was

1 going to go and do whatever he was told to do.

2 Q. Did he then -- would he go and turn and do  
3 that?

4 A. No, ma'am.

5 Q. He tried to put on a good show for you and then  
6 the minute he walked out of juvenile probation, didn't do  
7 anything?

8 A. He -- he continued to misbehave at school, not  
9 attend, would skip, would be rude to the teachers, not do  
10 his work.

11 MS. FISCHER: Your Honor, I pass the  
12 witness.

13 MR. REYES: May I proceed, Your Honor?

14 THE COURT: You may.

15 **CROSS-EXAMINATION**

16 **BY MR. REYES:**

17 Q. Ms. Pizana; is that correct?

18 A. Yes, sir.

19 Q. What is your degree in?

20 A. My degree is in social work.

21 Q. And when did you receive that degree?

22 A. Pardon me?

23 Q. When did you receive that degree?

24 A. In 1973.

25 Q. Now, you were asked to look at what was marked

1 as State's Exhibit P1 and P3; is that correct?

2 A. Yes, sir.

3 Q. And State's Exhibit P1, it alleges a criminal  
4 mischief; is that true?

5 A. Yes, sir.

6 Q. You were not present when that offense  
7 occurred; is that correct?

8 A. No, sir, I wasn't.

9 Q. So you don't know at all what Ruben's  
10 involvement in that case, if anything, was; is that  
11 correct?

12 A. No, sir.

13 Q. And you have no personal knowledge as to what  
14 happened during that criminal mischief; is that correct?

15 A. Not personally.

16 Q. So you cannot sit here and tell the ladies and  
17 gentlemen of the jury exactly what happened or did not  
18 happen on that date of offense; is that true?

19 A. No, sir. I said he was alleged to have  
20 committed those offenses.

21 Q. So, my question was, you have no personal  
22 knowledge as to what did or did not happen; is that  
23 correct?

24 A. No, sir.

25 Q. You were not -- you were not his attorney; is

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1 that correct?

2 A. No, sir.

3 Q. And you don't know what happened between him  
4 and his attorney; is that correct?

5 A. No, sir.

6 Q. You don't know whether or not the attorney  
7 might have forced him to enter a plea to that case; is  
8 that correct?

9 A. No, sir.

10 Q. You also talked about State's Exhibit P3.  
11 Again, you were not present when that alleged offense  
12 occurred; is that correct?

13 A. No, sir.

14 Q. And you have absolutely no personal knowledge  
15 as to what happened or what did not happen during that  
16 offense; is that correct?

17 A. No, sir.

18 Q. So you cannot tell the ladies and gentlemen of  
19 the jury what Ruben's involvement was, if any, during  
20 that theft; is that correct?

21 A. No. Only what he was alleged to do.

22 Q. Again, you were not his attorney; is that  
23 correct?

24 A. No.

25 Q. You stated that the District Attorney's Office

1 is the one that made the recommendations; is that  
2 correct?

3 A. We make recommendations to the District  
4 Attorney's Office. Sometimes they agree with us;  
5 sometimes they disagree.

6 Q. And they, in turn, come to court and they make  
7 a recommendation to the Judge; is that correct?

8 A. Yes, sir.

9 Q. And they make a recommendation to the Judge  
10 after they discuss the case with you; is that correct?

11 A. Usually with the director of the department.

12 Q. Okay. Isn't it correct that you provide a  
13 statement to the District Attorney that's in charge of  
14 the case regarding what's been happening with the case,  
15 what's presented in court; is that correct?

16 A. We provide a social history.

17 Q. So the District Attorney is aware as to the  
18 facts that you are alleging; is that correct?

19 A. As to what he's been -- what the child has been  
20 doing or not?

21 Q. Exactly.

22 A. Yes, sir.

23 Q. And isn't it correct that you stated that that  
24 offense which you're talking about, criminal mischief,  
25 State's Exhibit P1, you stated that it was charged as a



1 felony 3 criminal mischief; is that correct?

2 A. Yes, sir.

3 Q. So that is a felony of the third degree; is  
4 that correct?

5 A. Yes, sir.

6 Q. And the judgment that was introduced and that  
7 is before the ladies and gentlemen of this jury is a  
8 criminal mischief misdemeanor; is that correct?

9 A. Yes, sir. It's a class B.

10 Q. I'm sorry?

11 A. A class B.

12 Q. A class B misdemeanor?

13 A. Yes, sir.

14 Q. So that's basically about one or two levels  
15 lower than what he was charged with; is that correct?

16 A. Yes, sir.

17 Q. You also stated that with respect to State's  
18 Exhibit P3, he was arrested and charged with a burglary  
19 of a habitation; is that correct?

20 A. Yes, sir.

21 Q. And with respect to State's Exhibit P3, which  
22 is what the ladies and gentlemen of the jury have before  
23 them, that judgment shows a theft; is that correct?

24 A. I thought he pled to a burglary of habitation.

25 Q. I'm sorry?

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1 A. Burglary of habitation.

2 Q. Is that what the judgment on State's Exhibit P3  
3 is?

4 A. Yes, sir.

5 Q. Are you sure?

6 A. The judgment -- the petition alleged burglary  
7 of habitation.

8 Q. But I'm talking about the judgment which was  
9 admitted as State's Exhibit P3.

10 A. It would have been the result of the petition  
11 which alleged burglary of habitation.

12 Q. Well, the result of the petition on State's  
13 Exhibit P1 was felony of the third degree criminal  
14 mischief, is that correct, but the judgment itself --

15 A. No, sir. The petition alleged criminal  
16 mischief B. He was arrested -- at the time he was  
17 arrested he was charged with felony third degree --

18 Q. But in some situations --

19 A. -- but the D.A. filed it as a misdemeanor.

20 Q. In some situations and in some cases, even  
21 though the petition alleges one crime, he can go ahead  
22 and enter a plea or be tried on another crime; is that  
23 correct?

24 A. Yes, sir.

25 Q. And you stated that while he was on probation

1 and in your custody as a probationer, his mother did  
2 attempt to help him; is that correct?

3 A. Yes, sir.

4 Q. And she specifically also stated that she would  
5 provide treatment for him on her own; is that correct?

6 A. Yes, sir.

7 Q. You stated that in the summer of 1992, he was  
8 alleged to have committed a burglary of a habitation; is  
9 that correct?

10 A. Yes, sir.

11 Q. And all that was done by the District Attorney  
12 was to file a motion to modify; is that correct?

13 A. Yes, sir.

14 Q. So this is totally separate and different from  
15 a petition; is that correct?

16 A. Yes, sir.

17 Q. All they were doing was seeking -- the District  
18 Attorney was seeking to modify his probationary terms; is  
19 that correct?

20 A. Yes, sir.

21 Q. And what they did is take him out of his  
22 mother's home and place him at what's called La Esperanza  
23 Home for Boys; is that true?

24 A. Yes, sir.

25 Q. You stated that the mother was -- his mother,

1 Norma Gutierrez, was present throughout the time that he  
2 was on probation with you?

3 A. Most of the time she showed.

4 Q. Now, during that run away in which you  
5 testified about that happened on or about March of 1993  
6 and that burglary that happened on or about the summer of  
7 1992, you again were not present; is that correct?

8 A. No, sir.

9 Q. So you cannot tell the ladies and gentlemen of  
10 the jury what Ruben's involvement was, if any, during  
11 these two crimes; is that correct?

12 A. No, sir.

13 Q. As a matter of fact, he pled to what is called  
14 truancy as to that burglary of a habitation in 1992; is  
15 that correct?

16 A. In the modified disposition, yes, sir.

17 Q. Would you agree with me that run away is not a  
18 criminal act of violence?

19 A. No, sir. It's a CHINS, it's considered a CHINS  
20 which means --

21 Q. Would you agree with me that a burglary of a  
22 habitation is not a criminal act of violence?

23 MS. FISCHER: Your Honor, I'm going to  
24 object to that. That calls for a legal conclusion. She  
25 said that she knows it as a CHIN, Child In Need of

1 Supervision.

2 THE COURT: I'll permit her to answer.

3 Q. (BY MR. REYES) Would you agree with me that a  
4 burglary of habitation is not a criminal act of violence,  
5 not an act of violence against a person; it's against  
6 property?

7 A. Against property.

8 Q. And the criminal mischief, again, is not a  
9 criminal act of violence; it's a criminal act against  
10 property. Is that correct?

11 A. Yes, sir.

12 Q. And with respect to theft which is with respect  
13 to State's Exhibit P3, would you agree with me that that  
14 is not a criminal act of violence against a person; it's  
15 against property?

16 A. Yes, sir.

17 Q. You stated that he was taken into custody again  
18 in September of 1993; is that correct?

19 A. Yes, sir.

20 Q. And he was alleged to have committed a burglary  
21 of a habitation; is that true?

22 A. Yes, sir.

23 Q. You, again, were not present during that  
24 alleged offense; is that correct?

25 A. No, sir.

1 Q. So you don't know whether or not Ruben had any  
2 kind of involvement in this case?

3 A. No, sir.

4 Q. And again, burglary of a habitation is a  
5 criminal act against property; is that correct?

6 A. Yes, sir.

7 Q. It is not a criminal -- a criminal act of  
8 violence against a person; is that correct?

9 A. Yes, sir.

10 Q. Ms. Fischer asked you what it is that you did  
11 to try and assist or help Ruben Gutierrez; and you stated  
12 that you counseled him; is that correct?

13 A. Yes, sir.

14 Q. And the extent of you counseling -- of your  
15 counseling was to talk to him about what it is that he  
16 needed to do to comply with the court orders; is that  
17 correct?

18 A. Yes, sir.

19 Q. And the extent of your counseling was to also  
20 enroll him into what was called H.O.P.E.; is that  
21 correct?

22 A. Yes, sir.

23 Q. Where he would talk to senior citizens; is that  
24 correct?

25 A. No, not senior citizens.

1 Q. Okay. Who was it that he would talk to --

2 A. Students from UTB that were seniors.

3 Q. To your knowledge, do you know if these seniors  
4 were supervised by anybody from the university in talking  
5 to these probationers?

6 A. When they taught, no.

7 Q. I'm sorry?

8 A. They're supervised as far as who they're going  
9 to send them to and what they're doing, but if they  
10 actually sat in the counseling sessions?

11 Q. Uh-huh.

12 A. No, sir.

13 Q. So you don't know --

14 A. Not that I know of.

15 Q. So when you send somebody over there, you don't  
16 know what they're talking about; is that correct?

17 A. No, sir.

18 Q. And when they're talking to somebody at the  
19 University of Texas-Brownsville, you don't know what kind  
20 of problem that person that's counseling this probationer  
21 had; is that correct?

22 A. The role of the student wasn't to counsel with  
23 him. It was to take him to different activities, to the  
24 library, to bowling, or whatever they came up with to try  
25 to get him away from his -- what he was presently doing

1 and --

2 Q. But --

3 A. -- the peers he was associating with.

4 Q. But he wasn't supervised, was he? It was just  
5 a one-on-one session, the senior from the University of  
6 Texas at Brownsville and the juvenile probationer; is  
7 that correct?

8 A. Right. They were mostly activities.

9 Q. So you had an adult with a juvenile --

10 A. Yes, sir.

11 Q. -- and there was no supervision; is that  
12 correct? Other than them being alone?

13 A. Yes, sir.

14 Q. And you don't know what happened during those  
15 sessions; is that correct?

16 A. No, sir.

17 Q. Did you ever, as part of your counseling, send  
18 Mr. Gutierrez to see any kind of psychiatrist?

19 A. No.

20 Q. Did you, as part of your counseling, ever send  
21 Mr. Gutierrez to see any kind of psychologist?

22 A. He was ordered by the court.

23 Q. My question was, did you, as part of your  
24 counseling of Mr. Gutierrez, send him -- or make  
25 appointments for him to go see a psychologist?



1           A.    I made appointments after I was ordered by the  
2 court to set an appointment with Dr. Jay Martinez, the  
3 psychologist.

4           Q.    And what about counselors, people who actually  
5 have a counseling degree, did you ever allow him to go  
6 talk to those individuals?

7           A.    I made appointments when the mother chose  
8 Dr. Freeberg. So I set up the first initial appointment  
9 with him.

10          Q.    Now, you were stating that with respect to his  
11 schooling, that he would not do his work and he would  
12 sometimes fall asleep; is that correct?

13          A.    That's the reports I was getting, sir.

14          Q.    Those were reports that you were being -- that  
15 you were receiving; is that correct?

16          A.    Yes, sir.

17          Q.    So you weren't present at school with him; is  
18 that correct?

19          A.    No, sir.

20          Q.    You wouldn't sit in the classroom and observe  
21 what he was or was not doing; is that correct?

22          A.    No, sir.

23          Q.    So you can't tell the ladies and gentlemen of  
24 the jury whether or not these reports were, in fact,  
25 accurate or not; is that correct?

1           A.    No, sir.

2           Q.    Now, how many cases do you handle as part of  
3 your case load as a probation officer?

4           A.    They can range anywhere from 35 to 60.

5           Q.    Okay. And back in 1991 and 1992 and 1993, was  
6 that the approximate case load that you had?

7           A.    I would -- I don't remember, sir. It would  
8 have been somewhere in the 40's, 50's.

9           Q.    So, how many -- let's say of those 30 to 50  
10 cases, are those cases that you handle monthly?

11          A.    It depends on the situation and the individual,  
12 sir.

13          Q.    And in addition to you handling those cases,  
14 you also have to come to court; is that correct?

15          A.    Yes, sir.

16          Q.    And you usually spend your mornings here in the  
17 courtroom; is that correct?

18          A.    Sometimes. When we've got court hearings we  
19 would.

20          Q.    So that basically counts down your time that  
21 you can spend in your office; is that true?

22          A.    We usually leave the afternoons free because  
23 the students are -- the juveniles are in school in the  
24 morning. So they report to us in the afternoon.

25          Q.    So I guess what I'm trying to get at is the

1 fact that you don't have a lot of time to spend with  
2 these individuals that are placed on probation; is that  
3 correct?

4 A. No.

5 Q. You probably see them maybe about an hour a  
6 week; is that correct?

7 A. Yes, sir.

8 Q. And that is the extent of the time that you're  
9 allowed to see them because of your case load and your  
10 requirements to be in the courtroom, is that correct?

11 A. To personally see the student?

12 Q. Yes.

13 A. Yes.

14 MR. REYES: I'll pass the witness, Your  
15 Honor.

16 THE COURT: Anything further, counsel?

17 REDIRECT EXAMINATION

18 BY MS. FISCHER:

19 Q. Mrs. Pizana, is it your fault how Mr. Gutierrez  
20 turned out?

21 A. I don't think so, ma'am. No.

22 Q. Did you try everything that you possibly could  
23 to help get Ruben Gutierrez on the right track?

24 A. Yes, ma'am.

25 Q. Is there any program out there that you can

1 think of that you didn't send Ruben Gutierrez to?

2 A. Not that was available to us. The fact is that  
3 he was a run away most of the time.

4 MS. FISCHER: I pass the witness.

5 THE COURT: Anything further?

6 MR. REYES: Nothing further, Your Honor.

7 THE COURT: All right. You may step down.

8 Ladies and gentlemen of the jury, let's go  
9 ahead and take our morning break at this time. Remember  
10 the instructions I've given you not to discuss this case  
11 among yourselves or with anyone else, not to form or  
12 express any opinions. We'll take about a 15 minute  
13 break.

14 (Recess from 10:21 a.m. 10:41 a.m.)

15 (Jury not present)

16 THE COURT: Are you all ready for the  
17 jury?

18 MR. BLAYLOCK: Yes, sir.

19 MR. REYES: Judge, we just have one matter  
20 to take care of real quick.

21 THE COURT: You may be seated.

22 MR. REYES: I noticed that Mr. Galarza had  
23 faxed over a copy of a subpoena list that was filed by  
24 the District Attorney's Office in which they subpoenaed  
25 Roy Garcia who is the -- I believe the bailiff for this

1 court. And if he is going to be called as a witness,  
2 then we would ask that he also be subject to the rule.

3 THE COURT: Well, I'm going to excuse him  
4 from the rule because we need him for security reasons  
5 here.

6 Anything else?

7 MR. BLAYLOCK: Well, in addition, Judge, I  
8 don't anticipate using Roy in our case in chief on  
9 punishment. I'll use him possibly as rebuttal only.

10 One more thing, Judge, if I can just make  
11 a quick record of something that happened awhile back,  
12 just to clear the record up, if I could have the Court's  
13 patience?

14 THE COURT: Go ahead.

15 MR. BLAYLOCK: When we came back on the  
16 Monday after the weekend break on the first day of  
17 testimony on Friday, a -- one of the witnesses -- I mean,  
18 one of the jurors, number 14, that called one of the  
19 witnesses, and when that juror came in, when all the  
20 jurors came in in the morning, I would like the record to  
21 be clear that juror number 14 was sequestered and kept  
22 apart from the rest of the jury.

23 And I would just ask the bailiff, Roy  
24 Garcia, if that was the case. Is that the case; she was  
25 sequestered?

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1 THE BAILIFF: Yes, sir.

2 MR. BLAYLOCK: Okay. So I want the record  
3 to be clear that juror 14 had no contact with the rest of  
4 the jurors, and there's no way that she could have  
5 tainted it in any way. Just trying to make the record  
6 clear.

7 THE COURT: She was excused right after  
8 that.

9 MR. BLAYLOCK: Yes, sir.

10 MR. REYES: Nothing further, Your Honor.

11 THE COURT: All right. Bring in the jury.  
12 **(Jury brought into the courtroom)**

13 THE COURT: All right. You may be seated.  
14 You may call your next witness.

15 MR. BLAYLOCK: State calls Lorenzo  
16 Hernandez.

17 THE COURT: Would you raise your right  
18 hand, please?

19 **(The witness was sworn in by the Court)**

20 THE WITNESS: Yes, sir.

21 THE COURT: You may be seated.  
22 You may proceed.

23 MR. BLAYLOCK: Thank you, Judge.  
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LORENZO HERNANDEZ,  
having been first duly sworn, testified as follows:  
  
DIRECT EXAMINATION  
  
BY MR. BLAYLOCK:  
  
Q. Officer Hernandez, state your full name for the jury.  
A. Lorenzo Hernandez.  
Q. Okay. And how are you employed?  
A. With the Brownsville Police Department as a police officer.  
Q. Okay. And what are your duties today?  
A. I'm an auto theft agent at this point.  
Q. And were you -- how long have you been employed by the Brownsville Police Department?  
A. A little bit over nine years.  
Q. When was your date of hire?  
A. December of '89.  
Q. Okay. Were you a police officer in December of 1991?  
A. Yes, sir.  
Q. Okay. And were you still considered a rookie officer?  
A. Yes, sir.  
Q. Okay. What were your duties at that time?  
A. I was a patrolman at that time, sir, responding

1 to calls, took reports.

2 Q. All right. And patrolmen are uniformed  
3 officers?

4 A. Yes, sir.

5 Q. What kind of uniform were you wearing in 1991?

6 A. A blue uniform.

7 Q. Did it have a badge on it?

8 A. Yes, sir.

9 Q. Just like similar to the uniforms they have  
10 today?

11 A. Yes, sir.

12 Q. In December of 1991, were you called to what  
13 was then Vela High School?

14 A. Yes, sir.

15 Q. Okay. Would you tell me about that call? How  
16 were you dispatched out to that high school?

17 A. I was advised to respond to go to Vela High  
18 School in reference to a detained violent subject.

19 Q. All right. And were you in your unit, your  
20 patrol unit at that time?

21 A. Yes, sir.

22 Q. And did you go over to the high school?

23 A. Yes, sir.

24 Q. Tell me what you saw when you got there.

25 A. When I got there, I made contact with, I



1 believe, the assistant principal. He escorted me to the  
2 conference room. At said location there was a subject by  
3 the name of Ruben Gutierrez that was tearing up books,  
4 was sitting down and tearing up books.

5 Q. Okay. Let me go back. When you got there, you  
6 were met by who?

7 A. I believe the assistant principal.

8 Q. Okay. And he took you to a conference room?

9 A. Yes, sir.

10 Q. And in that conference room, who did they have  
11 in there?

12 A. A subject by the name of Ruben Gutierrez.

13 Q. Okay. And he was being detained in that  
14 conference room?

15 A. Yes, sir.

16 Q. And when you went into that conference room,  
17 what did you see and do?

18 A. He was sitting down tearing up books.

19 Q. Tearing them up?

20 A. Yes, sir.

21 Q. Just tearing them up?

22 A. Yes, sir.

23 Q. Okay. And --

24 A. He was making them into little pieces, making  
25 sure that they were all torn up in little pieces.

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1 Q. Little bitty pieces?

2 A. (Nods head).

3 Q. Is that -- Ruben Gutierrez, do you see him in  
4 the courtroom today?

5 A. Yes, sir.

6 Q. And point him out and tell me what color shirt  
7 he's got.

8 A. He's got a white shirt with a colored tie  
9 (pointing). He's got short hair.

10 Q. Thank you, sir.

11 MR. BLAYLOCK: Your Honor, may the record  
12 reflect that he has pointed to and identified the  
13 defendant in this case?

14 THE COURT: It shall reflect.

15 MR. BLAYLOCK: Thank you.

16 Q. (BY MR. BLAYLOCK) Now, Mr. -- or  
17 Officer Hernandez, what did you do when you went into  
18 that conference room and saw him tearing up the books?

19 A. At that point I just stood by, and I was trying  
20 to get the story as to what was going on. When this was  
21 going down, I believe that same assistant principal came  
22 in and -- or was there and told him to stop tearing up  
23 the books because they were expensive books.

24 Q. Okay. Was this assistant principal a man or a  
25 woman?

1 A. A man.

2 Q. A man.

3 A. Uh-huh.

4 Q. All right. And how did he respond when he told  
5 him to stop tearing up those books?

6 A. He got -- Mr. Gutierrez, the subject Gutierrez  
7 got up and continued tearing up the books intentionally,  
8 continued carrying out -- tearing up the books.

9 Q. What did you do?

10 A. I asked him to stop. He didn't stop. I  
11 grabbed him by the arm --

12 Q. Okay.

13 A. -- and I was going to arrest him at that  
14 time --

15 MR. REYES: I'm going to object, Your  
16 Honor. We have several objections; first of all, that we  
17 were not timely given notice of this alleged extraneous  
18 offense. We would object as to relevance. We would  
19 object also that it's unfair prejudice. And we would  
20 also object that under the Code of Criminal Evidence  
21 Rule 609(d), juvenile adjudications are not admissible in  
22 criminal proceedings.

23 THE COURT: It's overruled.

24 MR. BLAYLOCK: Thank you, Judge.

25 Q. (BY MR. BLAYLOCK) Okay, Officer Hernandez.

1 Tell -- let's start again. You told him to stop and he  
2 refused to stop?

3 A. Correct, sir.

4 Q. Okay. So you approached him?

5 A. Yes, sir.

6 Q. Okay. And then tell us what happened.

7 A. I grabbed him by the arm and told him to stop.  
8 When I did this, he punched me on the mouth.

9 Q. Okay. So you reached out and grabbed him. Do  
10 you remember if it was his left arm or right arm?

11 A. I grabbed him by the left arm.

12 Q. And he hit you with his right hand?

13 A. Yes, sir.

14 Q. Okay. And how long have you been an officer?

15 A. At that time I was an officer for approximately  
16 about a year.

17 Q. Okay. And had you been hit by anybody up to  
18 that point?

19 A. No, sir.

20 Q. Okay. Now, tell me, how did it feel when you  
21 got hit?

22 A. It hurt.

23 Q. It hurt?

24 A. It hurt a lot.

25 Q. Was he a big guy back then?

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1 A. The same.

2 Q. About the same?

3 A. About the same, sir, but he's pretty strong or  
4 was at that day pretty strong.

5 Q. Okay. So he was pretty fit and strong and  
6 capable of hitting a cop?

7 A. Yes.

8 Q. And in your nine years since then or -- well, I  
9 guess you've got a total of nine years.

10 A. A little bit more than that.

11 Q. Have you ever been hit that hard since?

12 A. I've never been struck in my mouth or face by  
13 anyone --

14 Q. Is it --

15 A. -- except for him.

16 Q. -- usual for people to resist arrest?

17 A. It's usual to resist arrest but not in the  
18 manner in which he did it.

19 Q. Okay. And how would you describe that manner?

20 A. He was being --

21 MR. REYES: I'll object as to relevance,  
22 Your Honor.

23 THE COURT: Overruled.

24 Q. (BY MR. BLAYLOCK) Okay. I'm sorry. I didn't  
25 hear you.

1           A.    He was being real combative.

2           Q.    All right. Tell the jury what happened after  
3 he hit you on the face.

4           A.    I grabbed him by the arm, placed him against  
5 the wall with a little bit of trouble. And I was  
6 assisted by three other males that were you there around  
7 the area, including the assistant principal.

8           Q.    Okay. And these other three guys are not  
9 officers, right?

10          A.    No, sir.

11          Q.    School employees?

12          A.    School employees.

13          Q.    All right. And tell me how he was treating  
14 them.

15          A.    We struggled with him because I wanted to  
16 handcuff him and I was having a real hard time. We  
17 struggled with him. During the process, one of the  
18 persons that was assisting me got kicked.

19          Q.    A teacher?

20          A.    Yes, sir.

21          Q.    And was it a light kick or a hard kick?

22          A.    He got kicked in the leg. I really don't know  
23 how hard or -- just after the fact that we had arrested  
24 him was when the teacher complained about being kicked.  
25 He had hurt because he made it known that it did hurt.

1 Q. All right. Now, how long did this whole  
2 struggle take place?

3 A. It seemed like forever, but approximately about  
4 two, maybe three minutes.

5 Q. Okay. And we're talking minutes, right?

6 A. Yes, sir.

7 Q. Minutes when you're struggling with somebody,  
8 is that a long time or a short time?

9 A. It's -- to me, it's a long time.

10 Q. All right. And that -- I mean, that Rodney  
11 King tape with the police officers, that only took  
12 seconds, right?

13 MR. REYES: I'm going to object, Your  
14 Honor, as to relevance.

15 THE COURT: Rephrase your question.

16 Q. (BY MR. BLAYLOCK) All right. I'm trying to  
17 put this in context. Have you ever had a longer struggle  
18 with a detainee since then?

19 A. No, sir. Usually just a matter of seconds.

20 Q. Okay. Usually the detainee struggles for  
21 seconds --

22 A. Yes, sir.

23 Q. -- correct? Like let's start right now. Like  
24 how long would the average -- I'm going to start right  
25 now and tell me when to stop, the average person resists.

1 A. Probably that much, just --

2 Q. Tell me when to stop.

3 A. Right now.

4 Q. Okay. That's four seconds. Four seconds. And  
5 this one lasted about a couple of minutes you said?

6 A. Yes, sir.

7 Q. And he not only hit you, he kicked some other  
8 people?

9 A. Yes, sir.

10 Q. All right. Did you finally get him under  
11 control?

12 A. Yes, sir.

13 Q. All right. Tell me how that came about.

14 A. The people that were assisting me finally  
15 managed -- one of them managed to put his right hand  
16 behind or grabbed a hold of his hand and place it behind.  
17 I -- I don't know how I did it or how actually we did it,  
18 but we handcuffed him. And then we just -- they moved  
19 away and I took control of him.

20 Q. Okay. And where did you take him?

21 A. I escorted him to my unit outside the school.

22 Q. Okay. This is your car --

23 A. Yes, sir.

24 Q. -- patrol unit? And did you put him inside  
25 your car?



1 A. Yes, sir, back seat of the patrol unit.

2 Q. All right. What happened when you got him in  
3 the back seat?

4 A. He became violent again and he started kicking  
5 the back window of the unit, the door window.

6 Q. With his feet?

7 A. With his feet, yes, sir.

8 Q. All right. So what did you do when that  
9 occurred?

10 A. By this time my backup was arriving. We got  
11 him out of the unit. We restrained him, placed him into  
12 the other patrolman's unit, and he was escorted to  
13 juvenile detention in a code -- 2 code 3 manner which was  
14 lights and sirens to get to the location faster.

15 Q. All right. And what was he under arrest for at  
16 that time?

17 A. For criminal mischief, the assault on a police  
18 officer, and the assault on the teacher, employee of the  
19 school.

20 Q. All right. And he was taken with lights and  
21 sirens down to the jail?

22 A. To the juvenile detention at that time, sir.

23 Q. The juvenile detention center.

24 A. Yes, sir.

25 Q. Okay. All right. Did you have any other

1 contact with him?

2 A. That date, no, sir.

3 Q. What other dates did you have contact with him?

4 A. When I was a burglary detective, his name came  
5 around as far as a burglary.

6 Q. Okay. And shortly after this, you did get  
7 promoted from patrolman to --

8 A. To detective, burglary detective.

9 Q. Okay. And do you know -- did you personally  
10 make an arrest of Ruben Gutierrez while you were a  
11 detective?

12 A. As far as burglaries, no, sir.

13 Q. Okay. Did you have any other contact with him?

14 A. No, sir.

15 MR. BLAYLOCK: I'll pass the witness.

16 MR. REYES: May I proceed, Your Honor?

17 THE COURT: You may.

18 CROSS-EXAMINATION

19 BY MR. REYES:

20 Q. Officer Hernandez, when you were originally  
21 employed or initially employed by the Brownsville Police  
22 Department back in 1989, were you assigned to the  
23 juvenile section?

24 A. I was a patrol officer, sir, started off as a  
25 patrol officer.

1 Q. Does the Brownsville Police Department have any  
2 section within its department that handles only juvenile  
3 individuals?

4 A. I believe they do, yes, sir.

5 Q. And on that day, on December the 5th of 1991,  
6 did anybody from that division respond with you?

7 A. No, sir.

8 Q. You were the only individual; is that correct?

9 A. Yes, sir.

10 Q. And you stated that you responded to Vela High  
11 School; is that correct?

12 A. Yes, sir.

13 Q. Now, you have no personal knowledge as to what  
14 had occurred before you arrived there; is that correct?

15 A. Correct, sir.

16 Q. You don't know whether or not anybody provoked  
17 Mr. Gutierrez or not; is that correct?

18 A. Correct.

19 Q. You stated that you grabbed Mr. Hernandez by  
20 his arm; is that correct?

21 A. Mr. Gutierrez?

22 Q. I'm sorry. Yes. Mr. Gutierrez by his arm; is  
23 that correct?

24 A. Yes, sir.

25 Q. And it was only after you grabbed him, that's

1 when he hit you; is that correct?

2 A. Yes, sir.

3 Q. You stated that after you grabbed him, you also  
4 placed him up against a wall; is that correct?

5 A. To control him, yes, sir.

6 Q. Okay. And also when you placed him up against  
7 a wall, there was three other individuals, three other  
8 males who were also assisting you; is that correct?

9 A. Yes, sir.

10 Q. So at this time, Ruben Gutierrez had four  
11 individuals, is that correct, upon him, grabbing him and  
12 putting --

13 A. Trying to --

14 Q. -- him up against a wall?

15 A. -- restrain him, yes, sir.

16 Q. At this time, there was four individuals that  
17 were grabbing him and trying to put him --

18 A. They were --

19 Q. -- up against a wall?

20 A. -- trying to restrain him, yes, sir.

21 Q. You stated that when one of the individuals who  
22 worked for the school was also kicked; is that correct?

23 A. Yes, sir.

24 Q. But you have no personal knowledge as to  
25 whether or not it was Mr. Gutierrez that kicked him; is

1 that correct?

2 A. It was Mr. Gutierrez --

3 Q. And --

4 A. -- because that date, that time, the person  
5 that got kicked advised me and told me that it was him  
6 and --

7 Q. Okay.

8 A. -- and charges were also filed against him for  
9 that assault.

10 Q. Well, you only know this information because  
11 you were told by him; is that correct?

12 A. Yes, sir.

13 Q. Okay. And you don't know this information  
14 other than that -- in that way; is that correct?

15 A. Can you rephrase --

16 Q. Other than you having been told by this  
17 individual, you don't know; is that correct?

18 A. Yes, sir.

19 MR. REYES: I have nothing further, Your  
20 Honor.

21 **REDIRECT EXAMINATION**

22 **BY MR. BLAYLOCK:**

23 Q. Now, Officer Hernandez, did you know  
24 Mr. Gutierrez before you went to the school on that day  
25 in December?

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1 A. No, sir, I never meet him before.

2 Q. So you had no ax to grind with him?

3 A. No, sir.

4 Q. Well, is it your fault that he hit you in the  
5 face?

6 A. No, sir. I was just trying to basically arrest  
7 him and control him.

8 Q. Were you four men picking on this boy?

9 A. No, sir.

10 Q. Were you --

11 A. I was just lucky that they assisted me.

12 Q. Okay. I mean, were you all prodding him? Is  
13 it you all's fault that he acted like he was acting?

14 A. No, sir.

15 Q. Do you know if anybody made him tear that book  
16 up?

17 A. No, sir.

18 MR. BLAYLOCK: Pass the witness.

19 MR. REYES: We have nothing further, Your  
20 Honor.

21 THE COURT: All right. You may step down.  
22 Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: You may call your next  
25 witness.

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1 MR. BLAYLOCK: Judge, the State would call  
2 Mr. Ricardo Leal.

3 THE COURT: All right. Could you raise  
4 your right hand, please?

5 THE WITNESS: Yes, sir.

6 (The witness was sworn in by the Court)

7 THE WITNESS: Yes, sir.

8 THE COURT: All right. You may be seated.

9 THE WITNESS: Thank you.

10 THE COURT: You may proceed.

11 MR. BLAYLOCK: Thank you, Judge.

12 RICARDO LEAL,

13 having been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BLAYLOCK:

16 Q. Good morning, Mr. Leal.

17 A. Good morning.

18 Q. Can you state your full name for the jury,  
19 please?

20 A. Ricardo Leal. Ricardo Leal.

21 Q. Thank you. And where do you work, Mr. Leal?

22 A. I work for the Texas Youth Commission.

23 Q. Well, what is the Texas Youth Commission?

24 A. It's an agency, it's a State agency that when  
25 the kids are at juvenile -- or at the probation

1 department, if for some reason the youth are not able to  
2 work with that department, they are committed to the  
3 Texas Youth Commission by the district judge.

4 Q. Okay. And the Texas Youth Commission, is that  
5 just one thing?

6 A. I'm sorry, sir?

7 Q. Is that just one thing? Is it just like a jail  
8 that they send them to when they can't control them?

9 A. The Texas Youth Commission, once they land at  
10 the Texas Youth Commission, they are sent to the  
11 assessment unit. From the assessment unit, they  
12 determine what placement that they're going to be placed  
13 in.

14 Q. All right. And tell us -- I mean, tell us  
15 generally how many different placement types there are.

16 A. Right now, the Texas Youth Commission, we've  
17 got about 11 State schools throughout the State of Texas.

18 Q. Okay. So there's a jail environment or State  
19 schools. Is there boot camp?

20 A. There is a boot camp right now, sir.

21 Q. What else? Give us a run down. What are some  
22 other kinds of opportunities --

23 A. We've got also halfway houses. We've got  
24 contract care programs that contract with the Texas Youth  
25 Commission as well.



1           Q.    All right.  So, what is the goal of the Texas  
2 Youth Commission?

3           A.    The goal of the Texas Youth Commission is to  
4 rehabilitate the youth.

5           Q.    All right.  And to do this, you have a  
6 multifaceted system?

7           A.    Yes, sir.

8           Q.    Okay.  And you did mention that when they go to  
9 the TYC, they're assessed and then assigned to  
10 whatever -- or what is the goal of the assessment?  Tell  
11 us that.

12          A.    When they do the assessment at the assessment  
13 unit, they do the testings, psychological testing,  
14 educational information, information that they acquire  
15 from the probation department, and they do  
16 psychologicals.  And once they get that information  
17 together, then they determine -- the assessment unit  
18 determines where the kid will be placed.

19          Q.    And are they trying to determine the needs of  
20 the kid?

21          A.    Yes, sir.

22          Q.    Okay.  So based on whatever they determine the  
23 needs to be, they send them to any one of these numerous  
24 places?

25          A.    Yes, sir.

1           Q.    All right.  Now, did you -- what is your job at  
2 TYC specifically?

3           A.    Currently in the Texas Youth Commission I'm a  
4 parole officer.

5           Q.    Parole officer?

6           A.    Yes, sir.

7           Q.    Okay.  And what is a case manager?

8           A.    A case manager is a TYC counterpart from a  
9 parole officer that works with contract care programs.

10          Q.    Okay.  And how were you employed by TYC in '93,  
11 '94?

12          A.    In the year of 1993 and '94 I was a case  
13 manager for the Texas Youth Commission.

14          Q.    Okay.  And tell us a little bit more about what  
15 a case manager does.

16          A.    A case manager supervises and monitors and  
17 makes sure that the program, whatever contract care  
18 program the kid is placed in, they meet the kid's needs.

19          Q.    Okay.  And eventually, a kid can be paroled out  
20 of TYC and they would have to report to you now --

21          A.    Yes, sir.

22          Q.    -- a parole officer --

23          A.    Yes, sir.

24          Q.    -- right?  Now, in 1993, did you take on a case  
25 of an individual named Ruben Gutierrez?

1           A.     In 1993, I was a case manager for the Rio  
2 Grande Marine Institute which is a contract care program.

3           Q.     Okay.

4           A.     In 1993, Ruben was placed at the Rio Grande  
5 Marine Institute, sir.

6           Q.     All right. Well, give us the history. You  
7 were the case manager for Ruben Gutierrez, correct?

8           A.     I was the case manager for Ruben Gutierrez when  
9 he was placed at the Rio Grande Marine Institute.

10          Q.     Okay. And first, before he gets to there, he's  
11 got to go to the assessment; and where is that located  
12 at?

13          A.     The assessment at that time was located at the  
14 Brownwood State School.

15          Q.     Okay. And they start compiling records,  
16 correct?

17          A.     Yes, sir.

18          Q.     And the records follow them around?

19          A.     Yes, sir.

20          Q.     And you have access to those records?

21          A.     I've got access to those records. That is  
22 correct.

23          Q.     And the records are kept in the usual course of  
24 the business of TYC?

25          A.     The records are kept in what we call a master

1 file; and the master file follows wherever the kid is  
2 placed in.

3 Q. Okay. And what I'm asking you is those records  
4 are kept in the usual business of TYC; their business is  
5 taking care of these individuals?

6 A. Yes, sir.

7 Q. All right. And all the entries in the records  
8 are made by people who have knowledge of those entries?

9 A. Yes, sir.

10 Q. All right. Now -- and you eventually got the  
11 records on Ruben Gutierrez?

12 A. Yes, sir.

13 Q. Okay. So it goes to the assessment and then --  
14 you've already told us how, but did they determine that  
15 he needed to go to Rio Grande Military Institute?

16 A. When he was at the assessment unit on --  
17 according to my records, on 9/30/93 through 10/14/93,  
18 Ruben Gutierrez after that assessment was placed at  
19 Valley House --

20 Q. And what --

21 A. -- on 10/14/93.

22 Q. What is Valley House?

23 A. Valley House back then on 10/14/93, it was a  
24 high -- it was considered a high restriction halfway  
25 house.

1 Q. Say that one more time.

2 A. It was considered a high restriction halfway  
3 house.

4 Q. Okay. So, it's a -- is that an effort to  
5 rehabilitate?

6 A. That's an effort to rehabilitate the youth,  
7 yes, sir.

8 Q. Okay. And you know that Mr. Gutierrez went  
9 there?

10 A. According to my records, that's what they  
11 indicate, sir.

12 Q. And then was he transferred out of there for  
13 some reason?

14 A. From Valley House -- he was placed there on  
15 10/14/93; and from Valley House, on 1/3/94 he was placed  
16 T.A., temporary admission, to the Evins Regional Juvenile  
17 Center in Edinburg, Texas.

18 Q. Okay. Do you know why he was placed from  
19 Valley to Evins?

20 A. According to my records, while he was at Valley  
21 House, he was involved in 15 incident reports -- or 15  
22 incidents. I'm sorry.

23 Q. And what -- I mean, tell me what -- just  
24 generally, what is an incident?

25 A. An incident is written on each youth when they

1 are involved in negative behavior.

2 Q. Okay. So he's at the halfway house; he's got  
3 15 incidents?

4 A. Yes, sir.

5 Q. He goes to Evins --

6 A. Yes, sir.

7 Q. -- temporarily?

8 A. Temporary admission, that's correct.

9 Q. And then, when does he to go Rio Grande  
10 Military Institute?

11 A. On 1/3/94 through 1/5/94 he was placed at Evins  
12 Regional Juvenile Center. And then they did -- a level  
13 II hearing was conducted; and Ruben Gutierrez was placed  
14 at the Rio Grande Marine Institute on 1/5/94.

15 Q. Okay. You just said something we don't  
16 understand. What is a level II hearing?

17 A. A level two hearing is -- within the Texas  
18 Youth Commission is a -- it's called an administrative  
19 hearing. They do those hearings when the kid has been  
20 involved in negative behavior that the current placement  
21 that the kid is in is not able to -- determine that  
22 they're not able to work with the kid at that point.

23 Q. All right. And what -- tell us what Rio Grande  
24 Military Institute is. What is that --

25 A. The Rio Grande Marine Institute, it's a high

1 restriction contract care program that contracts with the  
2 Texas Youth Commission.

3 Q. Okay. It's high restriction --

4 A. Yes, sir.

5 Q. -- contract care?

6 A. Yes, sir.

7 Q. And what type of environment is that?

8 A. It's an environment where the -- they provide  
9 close supervision and monitoring of the youth. And the  
10 program is located in the country, maybe -- I'd say maybe  
11 8 miles or 10 miles northeast of Los Fresnos, if I'm  
12 correct.

13 Q. Okay. I've been saying Military Institute, but  
14 it's Marine Institute, right?

15 A. Correct, sir.

16 Q. Okay. But is it a military style of an  
17 institute?

18 A. No, sir. It's not military style, no, sir.

19 Q. Okay. What is it, then?

20 A. The Rio Grande Marine Institute is a contract  
21 care placement that provides educational, they provide  
22 vocational training, they provide, like I mentioned  
23 earlier, close supervision of the youth.

24 Q. Okay. They try to teach them discipline?

25 A. Yes, sir.

1 Q. Respect for authority?

2 A. Yes, sir.

3 Q. And self-respect?

4 A. Yes, sir.

5 Q. Okay.

6 A. And try to teach them vocational skills plus  
7 the education.

8 Q. What kind of vocational skills?

9 A. Back then in that year they had carpentry.  
10 They had welding. If I'm correct, they also had air  
11 conditioning, if I'm correct.

12 Q. Okay. And do you know the date of birth of  
13 Ruben Gutierrez?

14 A. According to my records, the date of birth of  
15 Ruben Gutierrez is 6/10/77.

16 Q. Okay. So he's 16 years old at that time?

17 A. That is correct.

18 Q. All right. And when he got sent over to where  
19 you are, the Rio Grande Marine Institute, how long did he  
20 stay there?

21 A. When Ruben Gutierrez was placed at Rio Grande  
22 Marine Institute on 1/5/94, I, as a case manager, am  
23 supposed to be called in at any time or before or after  
24 the kid lands at the program. I was called on 1/5/94 at  
25 around 5 p.m. that I had a new resident or a new youth in



1 the program and his name was Ruben Gutierrez.

2 On that same day, on 1/5/94, at  
3 approximately -- on 1/5/94 at approximately 8:30 p.m.,  
4 the Texas Youth Commission was informed that Ruben  
5 Gutierrez had escaped from the program.

6 Q. He gets there at five and he's gone by 8:30?

7 A. Yes, sir.

8 Q. So he stays there three and a half hours?

9 A. My information, that's what it says here, yes,  
10 sir.

11 Q. Can you do any meaningful rehabilitation with  
12 somebody in three and a half hours?

13 A. No, sir.

14 Q. And when they escape, what kind of -- what  
15 happens?

16 A. When the youth escapes from the contracting  
17 program, such as RGMI, as a case manager, I'm responsible  
18 to issue what we call a directive, Texas youth directive.

19 Q. Is that like a warrant?

20 A. It's like a warrant, yes, sir.

21 Q. To take him into custody?

22 A. Yes, sir.

23 Q. And do you know when he was next caught?

24 A. My information states that he was caught on  
25 10/11/94.

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1 Q. Okay. And by then he's 17; he's an adult?

2 A. Correct, sir.

3 Q. So, he's a native through the juvenile system;  
4 he's in the adult system at that point?

5 A. Correct, sir.

6 MR. BLAYLOCK: I have no further  
7 questions.

8 CROSS-EXAMINATION

9 BY MR. GALARZA:

10 Q. Mr. Leal, just a couple of questions. How long  
11 have you been working with the TYC again?

12 A. I've been working with the Texas Youth  
13 Commission for about -- close to 18 years, sir. I'll be  
14 18 years on June 25th or 26th of this year.

15 Q. And you stated that before when you got this  
16 incident, you were a case manager; is that correct?

17 A. Correct, sir.

18 Q. And what does a case manager cover again?

19 A. A case manager is a person that is responsible  
20 to monitor and make sure that the kid receives the  
21 adequate treatment or the adequate supervision he needs,  
22 that the youth is in need of at that time.

23 Q. Okay. And when was the first day that you got  
24 in contact with Mr. Gutierrez?

25 A. I never made contact with the youth when he was

1 at the program, sir. I made contact -- according to my  
2 chronos that I wrote at that time, I made contact with  
3 Ruben on 10/11/94.

4 Q. And that 10/11/94 is when he was caught again;  
5 is that correct?

6 A. Correct, sir. That's when I was informed that  
7 he had -- he was in county jail.

8 Q. When were you first assigned this case? When  
9 were you the case manager --

10 A. I was the case manager of the youth when he was  
11 assigned or landed at the Rio Grande Marine Institute on  
12 1/54/94.

13 Q. And you stated that at that time he escaped  
14 after three and a half hours; is that correct?

15 A. That's what my information indicates, yes, sir.

16 Q. Okay. Before he was assigned over to the Texas  
17 Youth -- actually, to the Rio Grande Institute, you  
18 stated he was over at the Valley House?

19 A. Before he was assigned to the Rio Grande Marine  
20 Institute, he was admitted temporarily to the Evins  
21 Regional Juvenile Center, sir.

22 Q. Okay. What does that consist of?

23 A. The Evins Regional Center, when the youth are  
24 temporarily assigned there, it's like -- more like a  
25 security placement pending an administrative hearing.

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1 Q. Which is the assessment, he's going through an  
2 assessment, through an evaluation to see where --

3 A. Not when --

4 THE COURT: Just a minute. Just a minute,  
5 Mr. Leal.

6 THE WITNESS: I'm sorry, sir.

7 THE COURT: Let him finish asking the  
8 question.

9 THE WITNESS: Oh, I'm sorry.

10 THE COURT: You're running into each  
11 other; and it's hard to see when one ends and the other  
12 begins.

13 Finish your question, counsel.

14 Q. (BY MR. GALARZA) Okay. You said it's not an  
15 assessment. Okay. What is that?

16 A. Evins, sir, or -- you're asking about Evins?

17 Q. Yes.

18 A. Evins at that point, with the information I  
19 got, it was a temporary placement. It was a secured  
20 placement where the youth was placed there pending an  
21 administrative hearing.

22 Q. Is that where you stated that he got some  
23 write-ups or --

24 A. No, sir. He -- the write-ups, the incident  
25 reports that I show, he received those when he was at

1 Valley House.

2 Q. Okay. From Evins, where was he placed at after  
3 that?

4 A. After Evins when he had the administrative  
5 hearing, he was placed at the Rio Grande Marine  
6 Institute.

7 Q. So, at Evins, like you stated, it was just a  
8 temporary placement?

9 A. Yes, sir.

10 Q. After Evins, he was placed at the Valley House  
11 or is it the institute?

12 A. After Evins, he was placed at the institute.

13 Q. When was he placed at Valley House?

14 A. Valley House he was placed on 10/14/93 through  
15 1/3/94.

16 Q. So he stayed there from October to January of  
17 1994, is that correct, at Valley House?

18 A. That is correct, sir.

19 Q. Okay. Is that where he got the 15 incident  
20 reports?

21 A. That is correct, sir.

22 Q. Do you know what type of incident reports they  
23 are?

24 A. I could just read to you briefly what I have  
25 from my reports, if that's okay with you.

1 Q. Okay. Let me ask you this. What consists of  
2 an incident report? Is it answering back to a  
3 supervisor? What --

4 A. Incident reports consist of not following  
5 instructions, to escapes, anything that's negative, to  
6 possession of controlled substance, to assaults, to  
7 threatening people, anything that's negative, sir.

8 Q. Okay. So at this time, it could range from not  
9 following the rules to all the way to assault like you  
10 stated?

11 A. Assaults and escape. That is correct.

12 Q. Okay. And from the Valley House, that's when  
13 he was placed over in the Marine Institute; is that  
14 correct? He was taken over to the Marine Institute?

15 A. From Valley House, he was T.A. to Evins; and  
16 then from Evins, he was placed at the institute, sir.

17 Q. Okay. And you were assigned to his case on  
18 January 5th of 1994?

19 A. That is correct.

20 Q. And at that point, you say that there's a high  
21 supervision; is that correct?

22 A. That is correct, sir.

23 Q. Okay. What happened at that point? If there's  
24 a high supervision, how was he able to escape? Don't you  
25 automatically take him over and be with him at all times?

1 A. Yes, sir.

2 Q. And he was only there for three and a half  
3 hours?

4 A. Yes, sir.

5 Q. He automatically escaped. Where is the Marine  
6 Institute located at?

7 A. If I'm correct, I think it's maybe eight, maybe  
8 10 miles northeast of Los Fresnos and I think it's close  
9 to Bayview. I think Bayview is around that distance from  
10 Los Fresnos. It's close to Bayview, Texas.

11 Q. Is your office located there at the Marine  
12 Institute at that time?

13 A. At that time my office was located in  
14 Brownsville, sir.

15 Q. Okay. How were you able to have control of  
16 these individuals that you had to supervise?

17 A. I'm a case manager. So I really don't have  
18 physical control or supervision of the kids. The  
19 contract care program is the one that is responsible for  
20 them.

21 Q. Okay. At that point, who was the contract care  
22 program person?

23 A. I don't have that information with me, sir.

24 Q. Okay.

25 A. As far as -- you're talking about the person

1 that's in charge of the program?

2 Q. The person that had direct contact with  
3 Mr. Gutierrez.

4 A. It could be any number of staff that worked  
5 there at the program, sir.

6 Q. Okay. You don't assign one person to give him  
7 counseling, one person to supervise him, one person to  
8 have control over him?

9 A. There's persons that -- at the program that  
10 have control over the kids. I don't have the names of  
11 those persons. And as far as the counseling and the  
12 treatment, the time was too short.

13 Q. Okay. You stated earlier that part of your job  
14 is to try to go ahead and rehabilitate him. How can you  
15 rehabilitate him if they don't have a supervisor or  
16 somebody he has direct contact with?

17 A. Like I said, the time that he was in the  
18 program was too short to actually assign him to any  
19 particular classroom or counselor or maybe even a  
20 vocational trade, sir.

21 Q. As a case manager, you're allowed to see all  
22 his records before he goes into the Marine Institute; is  
23 that correct?

24 A. No. No. I don't have the authority to decide  
25 who comes into that program or not. So I really don't



1 have -- as far as the master file, I don't have access to  
2 the master file until he actually gets in placement.

3 Q. Okay. So, once he lands in placement, you  
4 don't know what kind of kid you're receiving at that  
5 point?

6 A. I'm sorry, sir?

7 Q. Once he lands in placement, once he landed at  
8 the Marine Institute, you still don't know what kind of  
9 individual you're receiving at that point?

10 A. That is correct.

11 Q. But you know that you're receiving somebody  
12 that's had some problems before?

13 A. Yes, sir.

14 Q. Isn't it your priority to try to rehabilitate  
15 them?

16 A. That's the priority of the Texas Youth  
17 Commission, yes, sir.

18 Q. You stated that he escaped January 5, 1994, and  
19 then he got caught in October of 1994; is that correct?

20 A. That is correct.

21 Q. Do you know where he was caught at?

22 A. No, sir, I don't know where he was caught at.

23 Q. Was he caught here in Brownsville?

24 A. I don't have that information, sir.

25 Q. As far as your information, did anybody go over

1 to his residence?

2 A. What I have, sir, as far as my documentation  
3 was that on 10/11/94 I was informed by the Cameron County  
4 Sheriff that Ruben had been arrested for burglary and  
5 forgery.

6 Q. Okay. So, at that point he had been arrested,  
7 but he was not served with a warrant; is that correct?  
8 Nobody went over to his house and tried to --

9 A. I don't have that information with me, sir.

10 Q. He was out for around nine months. There was a  
11 warrant pending or a warrant issued, and nobody went over  
12 to try to serve that warrant?

13 A. What we do is we issue out a directive; and we  
14 place him with the -- we enter that information on the  
15 NCIC system, the National Crime -- I don't recall what  
16 the I and the C stand for, sir. But it's entered there  
17 and it's a federal agency system that is placed -- all  
18 the warrants are placed there.

19 We also issue or fax or mail a copy of  
20 that directive to the Brownsville Police Department and  
21 the Sheriff Department, sir.

22 Q. Let's go back to the Marine Institute. How  
23 many individuals, how many I guess children do they have  
24 there at the Marine Institute where he was going to be  
25 placed at?

1           A.    It can range anywhere from maybe 22 to maybe 28  
2   at that time, sir.

3           Q.    Okay.  At that time, how many persons did you  
4   have working there in an eight hour basis at one point?

5           A.    At one point on an eight hour basis, we had --  
6   or the Rio Grande Marine Institute had about maybe six,  
7   seven staff.

8           Q.    Do you have any type of counseling there at the  
9   institute?

10          A.    I don't recall at that point, sir, at that  
11   year.

12          Q.    You stated that I believe you also provide  
13   vocational skills; is that correct?

14          A.    Yes, sir, vocational skills.

15          Q.    Who provides these skills?

16          A.    A staff there from RGMI.

17          Q.    These six to seven individuals that work there,  
18   the staff, are supposed to supervise these individuals  
19   and also provide vocational skills?

20          A.    Yes, sir.

21          Q.    That goes from carpentry to welding to air  
22   condition?

23          A.    Yes, sir.

24          Q.    What type of education do these people have?

25          A.    I don't have that information with me, sir.

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1 Q. Do they have a college degree?

2 A. Some of them do, yes, sir.

3 Q. Out of the six or seven, how many have a  
4 college degree?

5 A. I don't know.

6 Q. One?

7 A. I don't know, sir.

8 MR. GALARZA: That's all I have at this  
9 time.

10 MR. BLAYLOCK: Just a couple of things.

11 REDIRECT EXAMINATION

12 BY MR. BLAYLOCK:

13 Q. Now, sir, from the information that you have,  
14 do you think it was Rio Grande Marine Institute's fault  
15 that he ran away, he escaped?

16 A. No, sir.

17 Q. Do you think that their degrees or lack of  
18 degrees made him the way he is?

19 A. No, sir.

20 Q. And again, he was only there three and a half  
21 hours?

22 A. That is correct.

23 MR. BLAYLOCK: Nothing further.

24 MR. GALARZA: I have nothing further, Your  
25 Honor.

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1 THE COURT: All right. You may step down.  
2 You may call your next witness.

3 MS. FISCHER: State calls Michael Flores.

4 THE COURT: All right. Could you raise  
5 your right hand, please?

6 (The witness was sworn in by the Court)

7 THE WITNESS: Yes, sir.

8 THE COURT: All right. You may be seated.  
9 You may proceed.

10 MS. FISCHER: Thank you, Judge.

11 MICHAEL FLORES,

12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. FISCHER:

15 Q. Mr. Flores, will you please tell the jury your  
16 full name?

17 A. Michael Flores.

18 Q. And what do you do for a living?

19 A. I'm a supervisor for the Brownsville  
20 Independent School District, security services,  
21 communications, technical services division.

22 Q. Okay. Mr. Flores, you're going to have to tell  
23 us what that is.

24 A. I oversee the communications department, nine  
25 dispatchers. And I also oversee the installation and

1 maintenance of all technical equipment in our school  
2 district; alarms, video surveillance cameras and so  
3 forth.

4 Q. Okay. Now, how long have you been doing that  
5 specific supervising jobs?

6 A. The past four years.

7 Q. Okay. Now, back in 1992, were you working for  
8 the Brownsville Independent School District?

9 A. Yes, ma'am.

10 Q. And what were your duties back in 1992?

11 A. That was my rookie year in the security  
12 services department. I was a security officer stationed  
13 at the Rivera High School.

14 Q. And what do the security officers at Rivera  
15 High School, what is it your job to do?

16 A. Just to -- well, back then it wasn't very  
17 clear, but we provide a safe learning environment for our  
18 students and staff and faculty.

19 Q. Okay. But you're not a police officer?

20 A. No, ma'am.

21 Q. You are what they call a security officer?

22 A. Yes, ma'am.

23 Q. Now, if there was a problem with a particular  
24 child at Rivera High School, what would you do in  
25 response to that?

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1           A.     It would depend on the problem. We would take  
2 the child to the administrator and he would deal with it.

3           Q.     Okay. And let's talk about a particular  
4 incident that you had back on October the 9th of 1992  
5 dealing with an individual named Ruben Gutierrez. Were  
6 you asked at that time to escort someone?

7                     MR. REYES: I'm going to object, Your  
8 Honor, as to we were not given timely notice of this  
9 alleged offense. It's irrelevant. We'd also object that  
10 it gives an unfair prejudice. And also it violates  
11 Rule 609(d) of the Code of -- the Rules of Criminal  
12 Evidence.

13                     THE COURT: It's overruled.

14           Q.     (BY MS. FISCHER) Okay, Mr. Flores. I know I  
15 asked you a question and we need to get to the answer.  
16 Before we get there, let's talk a little bit more about  
17 you being a security guard -- or security officer I think  
18 is the technical term that you all had back then.

19           A.     Yes, ma'am.

20           Q.     Did you have to wear a specific uniform?

21           A.     Yes, ma'am.

22           Q.     And what was the uniform that you would wear  
23 when you were a security officer for B.I.S.D.?

24           A.     Okay. The first month we did not wear a  
25 uniform, but after that it was a blue shirt, a sky blue

1 shirt with Navy blue epaulets, blue pants, badge, name  
2 tag, so forth.

3 Q. Did you carry a gun?

4 A. No, ma'am.

5 Q. Okay. But you were dressed as someone who was  
6 in a position of security? The students knew --

7 A. Yes, ma'am.

8 Q. -- what your job was?

9 A. Yes, ma'am.

10 Q. Okay. Then let's talk about a specific  
11 incident back on October the 9th of 1992 where you were  
12 asked to escort an individual named Ruben Gutierrez. Can  
13 you please tell the jury about that?

14 A. We were called in to the office to escort  
15 Mr. Gutierrez off campus due to he was being -- he was  
16 suspended from school. As we were walking out towards  
17 the front gate --

18 Q. Okay. Let's stop right there. When you said  
19 you were asked to escort Ruben Gutierrez, do you see the  
20 person that you were supposed to escort off the campus in  
21 the courtroom?

22 A. Yes, ma'am, the young man in the white shirt  
23 right here (pointing).

24 MS. FISCHER: Your Honor, may the record  
25 reflect he has identified the defendant?